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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 245.

JESSE B. WILSON, RECEIVER OF J. H. SQUIER & COMPANY, APPELLANT,

vs.

JAMES B. EDMONDS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 3, 1886.

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1 *Bill of Complaint. Filed Dec.* 16, 1884. *R. J. Meigs, Cl'k.*

In the Supreme Court of the District of Columbia. In Equity.

JESSE B. WILSON, Receiver of the Estate of Josiah H. Squier & Co.,
vs.
JAMES B. EDMONDS. } No. 9245, Dock. 24.

The complainant, Jesse B. Wilson, receiver of the estate of J. H. Squier & Co., by leave of the court, files his bill and shows to the court—

First. That he and the defendant are both residents of the city of Washington, in the District of Columbia.

Second. That on the 7th day of June, 1884, one Josiah H. Squier, of said city of Washington, doing business as a banker and broker in the name and style of J. H. Squier & Co., being indebted in a large amount, to wit, the sum of $50,000 or more, made an assignment of all his effects to one Jay B. Smith for the benefit of his creditors by a writing duly signed, acknowledged, and recorded in the land records of the District of Columbia.

2 Third. That on or about — day of June, 1884, a suit in equity was commenced in the supreme court of the District of Columbia by Theron C. Crawford, a creditor of said J. H. Squier & Co., in his own behalf and in behalf of other creditors of the same, against the said J. H. Squier and said Jay B. Smith, being equity cause No. 9051 in said court, for the purpose, among other things, of having the said Jay B. Smith removed from his office as trustee and for the settlement of said estate, in which case an order was made removing the said Smith and substituting this complainant in his place as trustee and appointing him receiver of the estate of said J. H. Squier & Co., for the purpose of administering the assets of the said estate under the direction of the court, and directing him to execute a bond *on* the penalty of $50,000, with approved security, for the faithful performance of his duties as such receiver; that thereupon complainant accepted such appointment and executed the bond

3 required as aforesaid, with security approved by the court, and entered upon the performance of his duties as such receiver, and has been engaged in administering such assets as far as it has been in his power so to do. The said J. H. Squier died about the 11th day of September, 1884.

Fourth. That subsequent to the said assignment of said J. H. Squier & Co. to the said Jay B. Smith and before the said appointment of complainant as receiver as aforesaid the defendant, James B. Edmonds, filed in the said equity cause No. 9051 a petition claiming to be the owner of and entitled to a large part of the assets of said firm of said J. H. Squier & Co., and that by an order made in such cause the said Edmonds was allowed to take possession of sundry vouchers and securities for the payment of money and of several bonds, giving bond for the forthcoming of the same and the

proceeds thereof, to answer any future order of the court, all
4 of which will more fully appear by the record in said cause refer-ed to as a part of this bill.

Fifth. This complainant is informed and believes, and upon such information and belief charges the fact to be, that the said James B. Edmonds is not the owner of nor entitled to, as claimed by him in his petition aforesaid, the securities and vouchers which he claims and which have been turned over to him by an order of this court as aforesaid upon his giving bond; but he is informed and believes and so charges and represents that the said assets so turned over to the said Edmonds are a part of the assets of said J. H. Squier & Co.; that many of the said securities, notes, and vouchers which were turned over to the said Edmonds were indorsed specially and payable only to the order of J. H. Squier & Co., and that the legal title thereto at the time the same was so turned over to the said Edmonds was in the said J. H. Squier & Co., and that the legal
5 and equitable title, as he is informed and believes, to the whole of the assets so turned over was also in the said J. H. Squier & Co. Complainant also charges that at the time the said Edmonds filed his petition in said cause asking that said security should be turned over to him and claiming them as his own he was unable, and by his counsel confessed in court his inability, to mention or specify any considerable number of the said security to which he claimed to be so entitled.

Sixth. Complainant has been informed and believes, and upon such information charges, that the said James B. Edmonds had been interested in the said business with the said J. H. Squier & Co. for a number of years last past; that there are one or more contracts in writing between him and the said Squier which defines their relations to each other and the basis upon which they were doing business, but your complainant has no access to said contracts
6 and has not been able to see them, and therefore cannot state the contents thereof; but he is informed and believes and so charges that the conditions of said written agreement are such as in effect to make the said James B. Edmonds a partner of the said J. H. Squier & Co., and that the said Edmonds was a partner of the said Squier in said business for several years prior to and up to the time of the failure and assignment aforesaid, and that his attempt now to claim the bulk of the assets of the said firm is in fraud of the rights of the creditors of the said firm of J. H. Squier & Co. and against equity and good conscience.

Seventh. Complainant is informed and believes that the notes mentioned in the petition of the said Edmonds filed in said cause, copies of which are filed therewith, one for $40,000 and the other for $4,000, purporting to bear date on the 1st day of August, 1883, are mere pretexts and were given and intended to cover up and secrete the real manner of transacting business between the
7 said Squier and the said Edmonds; that the said Squier & Co. did not owe and never were indebted to the said Edmonds in any such sum of money as is claimed by him.

He also charges the fact to be that if the said J. H. Squier & Co.

are indebted to the said Edmonds in the said sum or any other sum *that* the said Edmonds has no legal right to claim the said securities which have been so turned over to him as aforesaid as collateral securities for the said sum of money so claimed to be due to him from Squier & Co. or in any other way whatever, but that the said assets of the said firm of J. H. Squier & Co. should be directed to be delivered up to the said receiver and distributed *pro rata* to the creditors of said J. H. Squier & Co.

Complainant further charges that during all the time the said James B. Edmonds had been interested in the business of the said J. H. Squier & Co. he has been from time to time and con-
8 tinually drawing out from said firm large sums of money claimed by him as interest upon the sums of money which he claimed to have advanced or paid to the firm of the said J. H. Squier & Co., and that such payments of such interest to him have been largely in excess of that allowed by law, in many instances as great as one and one-half per cent. per month, and that such sums so paid to him as unlawful and unconscionable interest have been drawn and paid from the deposits made with the said J. H. Squier & Co. by the persons who deposited their money with him and are now his creditors, so that in the aggregate the said James B. Edmonds has drawn from the said J. H. Squier & Co. of the moneys deposited with them by persons who are now large creditors of said J. H. Squier & Co. many thousands of dollars in the way of unlawful interest, and that in equity and good conscience he should be required to refund the money so received by him as unlaw-
9 ful interest, which in equity belongs to other people, if it should appear that he is not liable as a partner of the said Squier to pay all the debts of the said firm of J. H. Squier & Co.

Prayers.

In view of the premises complainant prays as follows, to wit:

First. That the said James B. Edmonds may be made defendant to this bill and required to answer the same fully and particularly upon oath, and that the process of subpœna may be issued against him commanding him to answer the exigencies of this bill.

Second. That the said defendant may set forth in his answer when he first had any business relations with the said J. H. Squier, what they were, and how long they continued; that he may state what was the consideration for the giving by said J. H. Squier
10 & Co. of the two notes, copies of which are filed with the petition of the said James B. Edmonds, and when that consideration, if any, passed from the said Edmonds to the said J. H. Squier & Co., and what the said J. H. Squier & Co. did with the amount so deposited and the consideration for which such notes were given, if any; that he may file with his answer each and every written contract that was ever made between him and said J. H. Squier & Co. or J. H. Squier in relation to every business transaction which they have had together or have been interested in together in any way; that he may also state when the vouchers

and other securities now in the possession of the said defendant were placed in the safe claimed by the said defendant in his said petition, whether they were all placed there at one time, and, if not, on how many different occasions, and the date of such occasions and who was present when they were so placed in said safe;

that he may also discover and set forth what money
11 has been paid by the said J. H. Squier & Co. or by the said J. H. Squier, or how much money has been drawn out of the concern of said J. H. Squier & Co. by said defendant, and how much money said defendant has received from the said J. H. Squier & Co. or the said J. H. Squier in any manner whatever as interest upon money invested by or for the said defendant in the purchasing of vouchers or otherwise; that he may state fully as to such money as has been paid to or received by the said James B. Edmonds, whether such payments were on account of interest or on account of principal claimed to have been advanced by the said defendant; that he may also discover and set forth what sum of money, if any, he ever paid into the concern of said J. H. Squier & Co., and what amount or amounts he ever loaned to said concern, and the amount or amounts he ever advanced to the said Squier & Co. for the purpose of buying or speculating in the purchase of vouchers of army or navy officers and other securi-
12 ties; that he may state specifically the various amounts and the various dates of such advances or loans by the said defendant and how the same were paid or furnished, whether in cash, checks, or drafts, and if in checks or drafts upon what bank or banks and the respective dates thereof; that he may also discover and set forth whether the said J. H. Squier & Co. ever gave to him any other notes for the payment of money except the two of which copies are filed with the petition of the said defendant; and, if so, how many such notes were given, the various amounts thereof, and the dates on which they were given, and how much, if anything, was paid to or received by the said defendant on said note, and how much as principal and how much as interest, and if any such notes were given when they were surrendered, and for what purpose and for what consideration.

Third. That when the premises shall be heard and considered that the court will direct and decree the vouchers and securities

which have been delivered to the said defendant under an
13 order of this court, and that the proceeds or collections thereof shall be delivered to and paid by him to the said receiver and distributed amongst the creditors of the said J. H. Squier & Co.; *that* the court will declare that said securities or the proceeds of the sale thereof were the property of said J. H. Squier & Co. which passed under said assignment for the benefit of his creditors, and that the complainant is entitled to the benefit thereof as receiver.

Fourth. But, when the premises shall be considered, if it shall seem to the court that the said Edmonds is not a partner, and as such liable to pay the debts of the said firm of J. H. Squier & Co., that then the complainant may have a decree against said James B. Edmonds for so much as it may appear has been paid to him by the

said firm of J. H. Squier & Co. as illegal interest upon money which he claims to have advanced or loaned to said J. H. Squier & Co., and to this end that all proper references may be had and
14 accounts may be taken under the direction of the court, and that a complete account may be taken between the said defendants and the said J. H. Squier & Co. to ascertain the true indebtedness, if any, of the said J. H. Squier & Co. to the said defendant.

Fifth. And that this complainant may have such other, further, and general relief as to equity appertains and the nature of the case may require.

J. B. WILSON, *Receiver.*

W. WILLOUGHBY,
Sol. for Comp't.

15 *Appearance of Def't. Filed Ja'y* 6, 1885. *R. J. Meigs.*

In the Supreme Court of the District of Columbia.

JESSE B. WILSON, Receiver, &c., *vs.* JAMES B. EDMONDS. } No. 9245, Equity Docket 24.

16 *Answer of Def't. Filed Feb.* 9, 1888. *R. J. Meigs, Cl'k.*

In the Supreme Court of the District of Columbia. In Equity.

JESSE B. WILSON, Receiver, Plaintiff, *vs.* JAMES B. EDMONDS, Defendant. } No. 9245.

The answer of James B. Edmonds to the bill of complaint filed in the above-entitled case.

The defendant, James B. Edmonds, denying that complainant has any equitable ground of relief against him and reserving all benefit of exception to the insufficiency and imperfections of the plaintiff's bill, answering said bill, says:

First. He admits the allegations contained in the first paragraph of the bill of complaint.

Second. He admits the allegations contained in the second paragraph of the bill of complaint except so far as hereinafter qualified.

17 Third. He admits the allegations contained in the third paragraph of the bill of complaint.

Fourth. He admits that he asked an order of this court directing the assignee of said Squier and Company to deliver to him the safe and its contents, which belonged to him and which he had specially deposited for safety and convenience in the banking-house of said Squier and Company. He admits, also, that by an order made in said cause he was allowed to open said safe and take therefrom certain vouchers and securities upon the terms and conditions described

in the fourth paragraph of the bill of complaint, but he denies that he at any time claimed to be the owner of or entitled to any of the assets of said firm of J. H. Squier and Company.

Fifth. He denies that he is not the owner of and entitled to all of said securities and vouchers claimed by him in his said petition and released to him by order of this court, and denies
18 that any portion of the same are the assets of said Squier and Company. He says that the total amount of said vouchers was about $28,443, a complete list of which was taken by said assignee, and, as this defendant is informed and believes, was filed in this cause; that they consist mostly of pay vouchers of United States officers, which, by custom, have become a sort of commercial paper having a market value, and some few of the same, as indicated in said list, were endorsed payable to said Squier & Co., but all of said securities had been delivered to this defendant by said Squier & Co. for a valuable consideration equal to their par value and upon the promise by the latter that they would redeem the same or collect the money thereon for this defendant, or do what might be necessary to enable him to demand and receive the money thereon; and this defendant denies that either legally or equitably said securities
19 were not his property or that they belonged to said Squier & Co. This defendant admits that, without access to his safe and papers, he was unable to specify all of said securities, but avers that they had all been delivered to him and were in his sole possession, and that as to their amount and value he had relied largely upon the representations of said Squier & Co., and has been to some extent deceived; that upon a question being raised by said assignee as to the defendant's rights the latter thought it proper to open said safe only in the presence of the creditors of said Squier & Co. or upon an order of court, and without access to his papers this defendant could not repeat their entire contents from memory; that since recovering said securities this defendant has found about nine thousand dollars of them to be of such doubtful value that he has, in pursuance of an order heretofore passed by this court, tendered them to the receiver in this case, and of the residue (less than $20,000) some are of doubtful value.

20 Sixth. He denies that he has been at any time interested in the business of the said J. H. Squier and Company, except as a creditor and in the manner hereinafter described. He denies that there are or have been any written contracts or agreements between himself and the said Squier & Co. or the said Squier, the conditions whereof are or were such in effect as to make the defendant a partner of the said Squier & Co. He denies that he was a partner of the said Squier & Co. or of the said Squier for several years prior and up to the time of said failure, or for any other time, and he denies that he is now attempting or has ever attempted to claim the bulk of the assets or any of the assets belonging to said firm, or in any way to defraud the creditors of said firm.

Seventh. He denies that the notes mentioned in the petition described in the seventh paragraph of the bill of complaint
21 were mere pretexts and were given and intended to cover up

and secrete the real manner of transacting business by and between this defendant and the said Squier, and he denies that the said Squier & Co. did not owe and never were indebted to the defendant in the sum of money claimed by him. He also denies that he has no claim on the said securities which have been turned over to him as aforesaid, and that the same should be directed to be delivered up to the said plaintiff, receiver as aforesaid, and distributed *pro rata* to the creditors of said Squier & Co. He denies that he has drawn from the said firm of Squier & Co. large sums of money or has received any sum whatever, except to apply upon the interest and to pay a small portion of the principal of said debts, according to the condition of the loan. He denies that he has taken any unlawful or unconscionable interest. He admits that he has at
22 times received one per cent., one and a quarter, and one and a half per cent. per month as payments to apply upon the indebtedness to him, partly as interest at the rate of ten per cent. per annum, the residue as a credit on the principal, to be allowed upon final payment. He denies that the sums so paid were from deposits of other creditors, but avers that they were paid from said loans made by this defendant or from money realized from his securities. He denies that he is accountable to the plaintiff or to any of the creditors of the said Squier & Co. for any of the moneys paid to him by the said Squier & Co. or the said Squier.

This defendant, further answering said bill, says that he first made the acquaintance of the said J. H. Squier in the early part of the year 1879. Said Squier then informed this defendant that he was then and had been for many years prior thereto engaged in the city of Washington in a general banking and brokerage busi-
23 ness under the firm name and style of J. H. Squier & Co. If any person or persons other than said Squier were then or have since been members of said firm this defendant was never informed of that fact.

All the defendant's dealings with the said firm of J. H. Squier & Co. were with the said J. H. Squier, and this defendant always understood and believed that the said J. H. Squier alone constituted said firm.

At the time last referred to—that is, in the early part of April, 1879—the said Squier informed the defendant that the said firm was at that time borrowing money of certain persons and paying therefor at the rate of two per cent. per month, to enable the firm to purchase certain securities which their capital was insufficient to purchase, and that the said firm wished to borrow additional moneys for the purchase of official pay vouchers, and would pay interest on the money so borrowed at the rate of from one to
24 one and a half per cent. a month. The said Squier then asked this defendant to loan him such moneys as he, the said Squier, might need, offering to pay the aforesaid rates of interest; but this defendant declined to make such loans, and informed the said Squier that he had no knowledge of his, the said Squier's, responsibility, and that ten per cent. per annum was the highest rate of interest the defendant had ever paid or received, and that on his

own account and on account of others he would gladly loan money at the rate of eight per cent. per annum if the security offered was unquestionable.

Subsequently said Squier came to the defendant with some of said pay vouchers and explained their character and worth, and urged the defendant to receive the same as security for money to be loaned to said Squier to enable him to purchase said vouchers. For the moneys so loaned the said Squier proposed that the note
25 of said Squier & Co. should be given and interest paid at the rate of ten per cent. per annum, payable at the end of each month, and a half as much more to be applied to the principal in final settlement. It was also proposed by the said Squier that the securities so obtained should be delivered to this defendant and should be surrendered by him as they matured upon payment of the money they represented or in the substitution of others of like kind and amount, provided payments were made as aforesaid before the maturity of the note or notes given for money borrowed. To this proposal the defendant agreed, and from about April, 1879, and prior to April, 1882, this defendant loaned to said Squier & Co. nearly forty-eight thousand dollars, taking notes for each separate loan at ten per cent. interest, and pay vouchers as securities therefor. Said loans were intended by this defendant to have
26 amounted in the aggregate to a small sum only, but from time to time said Squier came to this defendant's residence with more pay vouchers and earnestly requested other loans upon the same kind of security until they aggregated a large sum, said Squier averring that in a brief time they would be able to pay the entire debt at once. When defendant found that payments were not made as promised he refused to make further loans, and took a memorandum to protect his title and right to said vouchers and to the collection thereof. Said loans were made partly by giving to said Squier & Co. this defendant's checks upon bankers, partly by transferring to them the checks and drafts of other persons in his possession, and partly by giving them lawful currency. This defendant kept no books of account, and can only specify dates and amounts so far as they are supplied by such checks drawn by himself on the accounts of said bankers, to which he can now refer.
27 The annexed Exhibit "B" shows the dates, amounts, and upon whom said checks were severally drawn by defendant, all of which were paid to said Squier & Co., and for each loan a separate note was taken as aforesaid, which were subsequently extended and consolidated by the two notes referred to in said petition; that some time in 1882, there having been an extension given and a renewal of notes, due credit being given for all sums received of said Squier & Co. to apply on said loans, both interest and principal, the said Squier & Co. agreed to pay said debt entirely off at a period not later than the early spring of 1883. When that time arrived said Squier & Co. professed to have been disappointed in procuring money that they had expected, and on August 1st, 1883, defendant demanded a final settlement and payment of the moneys due him, but said Squier & Co. begged for a further extension of time for a period not

exceeding six months, and made such an earnest appeal that
28 this defendant consented thereto as to forty thousand dollars of said indebtedness. This defendant then held the notes of said Squier & Co. for forty-four thousand dollars and pay vouchers, as security therefor, to about that amount. The interest on said notes had then been fully paid and the debt had been slightly reduced by the monthly payments in excess of interest made subsequent to April, 1882, the exact amount of which excess was not then exactly agreed upon or determined for want of some data, but the amount was less than $3,000; therefore the renewal notes were given for the same total amount as those surrendered by this defendant, leaving the exact amount to be credited for further consideration, with the agreement that by means of that credit and payments in money four thousand dollars of said debt should within three months be cancelled. Said Squier & Co. agreed that while said notes
29 were running they would keep the securities fully equal to the debt, and when unable from the profits to pay the stipulated sum monthly to apply on the notes, then any sums collected on said vouchers were not to be reinvested nor others taken in lieu thereof, but applied on the debt; also that this defendant's said securities and any collections thereon were to be kept free from other transactions of said firm about which this defendant had no knowledge and in which he had no interest. No portion of said notes was thereafter paid except said monthly sum of $540, at the end of each month, prior to the failure of said Squier & Co., but said firm delayed final payment from time to time and constantly declared that they would very soon pay the defendant in full. Meantime, because of the reduction of the debt, though such reduction was slight, the defendant allowed the said Squier & Co. in the exchange of securities to reduce the aggregate. In so doing he confided in said Squier as to the quality of
30 the new and substituted securities and as to the amount thereof, and on the failure of said Squier & Co. this defendant was surprised to find that the amount of securities held by him was less than had been represented and less than the aggregate debt, and that many of them were worthless that had been represented to be good.

The total amount of the loans made by this defendant to said Squier & Co. amounted in the aggregate to nearly forty-eight thousand dollars.

The total amount of all moneys paid by the said J. H. Squier & Co. or the said J. H. Squier to this defendant, in respect of said loans for interest or principal or for any other purpose, was less in the aggregate than $29,000.

No sums whatever were "drawn out" of said firm by this defendant or received from it except the payments aforesaid to be applied first upon interest and the residue upon the principal, and
31 this defendant never put any money into said firm or had any business transactions with it, except to make the loans as aforesaid, which were made to accommodate said Squier & Co. and to enable them to purchase said vouchers upon condition that

they deliver the same to the defendant as security for said loans. A note was in every instance given for the loan, bearing ten per cent. interest, which were surrendered to said Squier & Co. whenever others were given in lieu thereof, and the defendant is unable to give the dates or amounts thereof more particularly. The securities mentioned in said petition were delivered to this defendant from month to month in lieu of others for the same or larger amounts surrendered to said Squier & Co., it being usual for said Squier & Co. to deliver a certain amount to defendant and to receive back others of like or larger amount that had matured, and occasionally defendant intrusted small amounts to said Squier & Co. for collection upon the agreement to return a similar amount in a few
32 days thereafter, to be purchased with the proceeds of the collection, according to said written memorandum, Exhibit "A." A similar but briefer memorandum had been made in 1882 between said parties, which was given up with the old notes, on August 1, 1883, to said Squier & Co., so far as defendant now recollects or can answer. The total number of said notes given by said Squier & Co. to respondent was equal to the total number of loans and renewals.

This defendant, having answered said bill as fully as he is advised it is necessary or proper to do, desires to say that when he has collected all that can be realized from said securities mentioned in said order of the court the amount so obtained, added to all sums he has received from said Squier & Co., will not pay the principal of the loans made to them as aforesaid by respondent, regardless of interest, and respondent is entirely willing, as he proposed to said Squier & Co. and their creditors before this suit was begun, to pay
33 over to other creditors of said Squier & Co. any sums he may have received or shall receive above said principal loans and six per cent. interest per annum, whether so required by law or not.

Wherefore he asks that said bill be dismissed with costs.

J. B. EDMONDS.

NATH'L WILSON,
Sol. for Def't.

DISTRICT OF COLUMBIA, *ss:*

James B. Edmonds, being first duly sworn, deposes and says that he is the defendant named in and making the foregoing answer by him subscribed; that he knows the contents thereof, and that the facts therein stated, of his own knowledge, are true, and those stated upon information and belief he believes to be true.

J. B. EDMONDS.

Subs-ribed and sworn to before me this 5th day of February, A. D. 1885.

WILLIAM TINDALL,
Notary Public.

34 EXHIBIT "A."

This agreement witnesseth that Jas. B. Edmonds has delivered to J. H. Squier & Co. forty-four thousand dollars for investment by the latter for the former in the purchase of pay vouchers, payable not later than six months from date of purchase, of officers in army, navy, or civil service of the United States and for reinvestment upon collection by said Squier in same kind of securities, but not unless they are purchased so as to yield to said Edmonds a net profit of one and one-fourth per cent. per month on forty thousand dollars and one per cent. per month on the four thousand dollars and enough besides to pay said Squier & Co. for their services and for guaranteeing prompt payment of the vouchers.

Said Squier & Co. guarantee the genuineness of each voucher he shall purchase as well as its prompt payment and the return to said Edmonds of said principal sum of forty-four thousand dollars
35 over and above said profits, and may retain all profits above those going to said Edmonds as aforesaid.

Said Squier & Co. shall transact all the business without charge. Said Edmonds shall keep possession of the vouchers to the extent of the principal invested and two per cent. besides, and will exchange as they become payable for others of like kind or for cash. He may keep his safe therefor in banking-house of said Squier free of charge.

Said Squier & Co. give their notes to said Edmonds for said $44,000 and interest 10 p'r c't, to wit, one for forty thousand and one for four thousand dollars, and of same date as this memorandum, and is a further guaranty and indemnity to Edmonds.

This contract shall terminate upon notice by either party or upon death of either, and then all moneys so invested shall be returned to said Edmonds, with interest to extent aforesaid, and in case of death of said Edmonds the money shall be paid to his present wife if she survive him.

36 All moneys that may be collected by said Edmonds on said vouchers or received shall be credited to said Squier & Co. on said notes.

Witness our hands this 1st day of August, 1883, at Wash'n, D. C.

(Signed) J. H. SQUIER & CO.
J. B. EDMONDS.

37 EXHIBIT "B."

Showing Dates and Amounts of Loans, so far as Made by Checks of Respondent.

Gilman Sons & Co., of N. Y. city.		Riggs & Co., of Wash'n, D. C.	
April 3, '79	$2,000	Sept. 17, 1879	$1,000
May 1, 1879	2,000	Oct. 31, 1879	2,000
October 4, "	3,000	Nov. 25, 1879	2,000
" 10, "	2,000	Nov. 28, 1879	2,000
Jan'y 31, 1880	1,000	Dec. 2, 1879	820
Feb'y 2, "	2,200	Dec. 12, 1879	1,000
" 10, "	1,500	Dec. 27, 1880	1,000
March 6, "	1,000	Jan'y 2, 1880	737 50
" 16, "	1,000		
" 27, "	1,000	Total	$10,557 50
April 5, "	1,000		
" 10, "	1,000		
June 9, "	800		
" 16, "	900		
July 2, "	400		
Aug't 30, "	550		
Octo. 25, "	1,000		
Nov. 15, "	500		
Dec. 1, "	600		
March 1, 1881	2,500		
October 1, "	1,000		
Dec. 2, "	1,000		
March 2, 1882	1,850		
Total	$29,800		

38 *Replication. Filed Feb'y* 9, 1885. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia. In Equity.

JESSE B. WILSON, Receiver, &c., *vs.* JAMES B. EDMONDS. } No. 9245.

The plaintiff hereby joins issue with the defendant.

W. WILLOUGHBY,
Sol. for Plaintiff.

39 *Complainant's Testimony. Filed Apr.* 6, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia. In Equity.

JESSE B. WILSON, Receiver, etc.,
vs.
JAMES B. EDMONDS.
} No. 9245, Eq. Doc. 24.

WASHINGTON, D. C.,
February 19, 1885—3 o'clock p. m.

Met pursuant to the foregoing notice.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of the defendant, Mr. Wilson.

JAMES B. EDMONDS, a witness of lawful age, is examined by Mr. WILLOUGHBY:

Q. What is your name, residence, and occupation?

A. James B. Edmonds; residence, Washington city; at present I am a Commissioner of the District of Columbia.

Q. What has been your occupation heretofore?

A. I practiced law years ago.

Q. When did you first make the acquaintance of Mr. Squier?

40 A. Some time after I came to Washington. As near as I can state, about 1879; probably about January or February of that year. I cannot state the precise time.

Q. When did you first go into business relations with him?

A. About April I loaned him a couple of thousand dollars.

Q. April, 1879?

A. Yes, sir; I think that was the time. That was the first relation I ever had with him. He persuaded me to loan him a couple of thousand dollars, and some time after that I loaned him two thousand more.

Q. Did you take a note for these amounts?

A. Yes, sir; I took two notes. I let him have two thousand dollars and then two thousand after that, and took his notes at ten per cent. interest.

Q. Was there an understanding between you that you were in any way to be paid more than ten per cent. interest?

A. No, sir—that is, except the principal. It began by his
41 offering me more, but I told him that I would let him have money at eight per cent. if he would give me good security, because I had money belonging to others and some of my own that I would be glad to put out; that I was a stranger in Washington and did not know what to do with it, but I said, I don't know anything about the security that you talk about, but if you will give me undoubted security so that I can find it to be such I will give you money at eight per cent. He had told me that he was paying two per cent. a month. I don't know whether he said that he paid any more, but he did say that he had paid as high as two per cent.

and was then paying as high as two per cent. a month; that he was being called upon by officers of the army to cash vouchers more than he had money to do. He had told me that he was a banker doing a general banking business, discounting paper of various kinds, and that, among others, he discounted the pay of army
42 officers; that he had some of that kind offered to him then, but that he had no money to accom-odate them with, and that he would pay me, I think, one and a half per cent. a month, or something like that; one and a half or one and a quarter; I will not be absolutely positive, but it was some sum higher than ten per cent. I told him that where I had come from ten per cent. was the common rate. I had never charged higher and I had never paid higher. I had both paid and received ten per cent., and that was, I thought, as much anybody ought to pay. The matter ran on in this way some two or three times, when he came to me at the place where I was boarding and showed me the vouchers, and said to me, These are just as good as Government bonds. You need have no doubt about it. You just go and present these and they will pay them to you. There is nothing but the death of the officer or his possible dismissal that can make any doubt about it. In the meantime I had talked with one or two of whom he had spoken. I had
43 talked with two or three men and they said that Mr. Squier was an honest man. They did not know anything about his affairs, but they thought him honest. About these pay vouchers, I think I spoke to one or two officers, and they said they were accustomed to get them discounted. When he brought them to me again and wanted me to take them I took $2,000 worth.

Q. Was that at the beginning?

A. Yes, sir. This talk was before that. When he came he said, I will give you ten per cent. I think he offered somebody as security, but I did not know anything about that person. He gave me the name of General Schenck, and I don't know but he signed the first note or two. I did not know anything about him. His name was simply brought there to persuade me to let him have the money. The voucher was the thing that I supposed was the principal security. I found that there were some persons loaning him money
44 without any security. I declined to do that, and I told him so. He said, If you will not take more than ten per cent., and if you do not want to take more than ten per cent., I will pay the amount and you may endorse the excess on the principal. I made that arrangement with him.

Q. That was before you let him have any money at all?

A. That was the first I let him have.

Q. First you let him have $2,000?

A. Yes; I think the first was two thousand; but he soon took up the first notes and gave others. I did not know anything about this General Schenck financially, and I let him——

Q. Do you remember the amount of the vouchers you took for the first $2,000?

A. No; I cannot tell the exact amount.

Q. All these notes that you gave were surrendered to Mr. Squier,

so that you have no knowledge of them except from recollection?

45 A. Yes; as soon as they were surrendered and cancelled I never thought of them. It is a mere matter of general recollection.

Q. Did you make any agreement in writing with him?

A. No; none other than the note. I took his note at ten per cent. That is all.

Q. Did you ever make any application of the money which you received upon the notes themselves?

A. I do not know as I did.

Q. What account did you keep of the moneys which you received?

A. Of the moneys which I received I kept no account, except perhaps a slip, until I would give the note up, and then I would make another memorandum, and if we agreed about the amount and how much was to be credited that was surrendered, and that was all there was of it. I did not keep account of the moneys which I paid him other than the note I took, and I did not keep an account

46 of the money he paid me other than a little memorandum signifying the amount. When that note was given up we figured up how much I was entitled to and we made a settlement. Several times that he was not ready to pay all he asked me to continue it, and I took other notes.

Q. When you took those subsequent notes on the notes not being paid and in making up the account did you charge more than ten per cent.?

A. No, sir.

Q. Was the amount of the new notes which you received equal to the old notes, with interest at ten per cent., deducting from them the money received?

A. No; that was not the way it was done. He would be wanting some money, and in his payment of money to me or in my letting him have money whatever balances there were were settled, and whatever he owed me I took a note for, and, perhaps, if it was not an even number of dollars I would add something to it, or he

47 would come to me with a check or some money, and inasmuch as there would be something due him I would take less, perhaps. Settlements were made in that way.

Q. You did not make a settlement every time you advanced him money?

A. O, no; he usually came to my house, or at my boarding-house he would come to my room. He would come in with some vouchers in his hand and say, Here are some vouchers of lieutenant so and so or colonel so and so, who wants cash for them. I have no money. If you have the money and will let me have it I will be very much obliged to you. So I would let him have the money. Perhaps I would not have the exact amount, and I would wait for perhaps a day or two until I would have it. We adjusted it in that way.

Q. Did you keep an account of the moneys that you let him have?

A. I knew at the time, of course, as I had his note for it.
47½ I kept no books of accounts. The note was all I had to show for it.

Q. You let him have these amounts in checks generally, did you?

A. I find that I let him have it more generally in checks than in any other way. Part of the money that I let him have was money due me from him. Part of the money would be money that I would happen to have in my pocket. Part of the money would be a draft or check of somebody that I had in my pocket, and I would transfer it to him. If it was more convenient and I had the money in bank I would give him a check on the bank. That was more often the case. I am able to know this simply by the checks that have been returned to me; but for them I would have no memorandum and nothing to go by.

Q. These checks amounted to about $40,000, as you have described them in your exhibit?

A. That exhibit is correct. The balance was advanced to
48 him in cash in the various ways I have specified.

Q. You have no memorandum of the $7,000 or $8,000 advanced to him?

A. No; except the notes he gave me when he got it.

Mr. WILSON: What $7,000 or $8,000 do you mean?

The WITNESS: The difference between $40,000 and the total amount. I would not be able to give that $40,000, except that I have seen the checks on the banks. That has enabled me to give this, and that is the only thing I can give.

Mr. WILLOUGHBY: Did you examine Mr. Squier's books at the time you went into this arrangement with him?

A. No, sir; I never examined a book of his, and never had any occasion to. I did not know anything about his affairs. I was an absolute stranger to them, and I had no occasion to look into his affairs one way or another, and I did not inquire about it,
49 except that I inquired of a neighbor about him, who told me that he was an honest man. I lent him the money upon the strength of the security and upon the supposition that he was a man of honesty.

Q. I have been informed that you have been in the habit of going to Mr. Squier's office after hours to consult with him. Is that true?

A. No, sir; never. I have been at his bank only when he allowed me to keep my safe there to get papers. He would usually request me to come about half past three o'clock in order to give him some vouchers for collection or give me others in lieu thereof. When I would go to his office I never talked with him about his other business. I don't know a thing about his business, except just as much as I have already told you in regard to this matter.

Q. When you made settlements with him were they made from his books?

A. No, sir; I never saw his books, except I would, perhaps,
50 see his clerk have them. I don't know whether I even did

that or not. I never looked into one of Mr. Squire's books in my life that I can recall. He had a huge safe which I never looked into. I may have seen it open sometimes, as I would by going into any gentleman's office, but I never looked into it, and I don't know anything about it.

Q. In the first part of your business relations vouchers were delivered to you and retained by you?

A. Yes, sir; they were retained by me until the time came to collect them. When he wanted them he would have to come to my house. He would say, You have a voucher which is about to mature, and if you will let me have that here is another one for more or for an equal amount. If he did not find me in he would leave word and ask me if I would not bring certain vouchers to him, and he would give me others in lieu of them at his bank, which I sometimes did.

Q. How long was it before you got a safe to put these vouchers in?

51 A. I got my safe when I was building my house. I was building my house at this time. I commenced building it in May; it was finished in November. Being over in New York at one time I purchased a small safe to put in my house; but when I got home and told my wife that I was going to put a safe in the house she talked me out of it. She got a newspaper and showed me an account of a woman that had been annoyed by burglars being enticed into a house by having a safe in it. Then I spoke to Mr. Cummings about it. He told me that I could put it in his office; he was a neighbor of mine. He said, You had better have that brought to my office; and I expected to do so, but Mr. Squier had been spending an evening at my house, and we were talking about the thing, and he said, Why don't you bring it down to my bank? I have the household goods of such a person and the trunk of such a person at the bank. I have plenty of room; just bring it down into my
52 back office. I went to Mr. Cummings' office; he has a partner; both have a single room and a small one for the office. They have a safe there and their library. I told them that it was an imposition on them, and that I would not bring it there. I went to Mr. Squier's bank. He said, Bring your safe right here. It will cost you nothing.

Q. That was in the fall of 1879?

A. Well, I should say so; but I cannot give the exact date.

Q. Up to that time you had retained these vouchers yourself?

A. Yes, sir; I had them in my own possession.

Q. After the safe was put into his office you put the securities there?

A. I did a little while afterwards. I think I had them in another box that I had hired awhile before I had purchased my safe, but finally I got them all down there, because occasionally he would want one, and then I would have to go to some place for them, so I concluded that I would put them in that safe where I kept other valuables.

53 Q. Were you particular at all times to keep in your hands vouchers equal to the amount of the notes?

A. Yes, sir; I supposed I was until after Mr. Squier's failure, when I found that they amounted to less. I had become a little careless since I had gotten into business down here, and as he was entitled to a credit I allowed him to draw a small portion of the securities, but he withdrew more than I was aware of.

Q. It seems that the amount of the vouchers which were in the safe at the time of his failure were very much less than the amount of the notes?

A. Yes; they were much less than I supposed. They were not in Mr. Squier's possession or custody and he could not have gotten them, and the amount of them was less than the note considerable, and less than they should have been and less than I knew them to be.

54 Q. Did you have it brought to your attention at any time that the amount of the vouchers returned by him was less than the amount of money due you?

A. To a slight extent. He claimed this on account of the offset that he was entitled to being sufficient to reduce the note, which was true to some extent. I told him that to that extent he was entitled to reduce the amount of the vouchers; that was our understanding. I think our arrangement was that it should be two per cent. more than the actual debt, whatever that might be.

Q. Was this agreement which was made in 1883 in duplicate?

A. I don't remember. It seems to me as though one was drawn up, either by him or by me, which for some reason did not quite suit, and I think that this was perhaps the outgrowth of that, or that amended. I have forgotten exactly what the facts are.

Q. Have you the original agreement?

A. Yes, sir.

55 Counsel for the complainant offers this agreement in evidence, and it is hereto attached and marked Exhibit W. H. S. No. 1, and is Exhibit "A," with the answer.

EXHIBIT W. H. S. No. 1.

This agreement witnesseth that Jas. B. Edmonds has delivered to J. H. Squier & Co. forty-four thousand dollars for investment by the latter for the former in the purchase of pay vouchers, payable not later than six months from date of purchase, of officers in army, navy, or civil service of the United States, and for reinvestment, upon collection by said Squier, in same kind of securities, but not unless they are purchased so as to yield to said Edmonds a net profit of one & one-fourth per cent. per month on forty thousand dollars & one per cent. per month on the four thousand dollars, and enough besides to pay said Squier & Co. for their services & for guaranteeing prompt payment of the vouchers.

Said Squier & Co. guarantees the genuineness of each voucher *he*

shall purchase, as well as its prompt payment and the return
56 to said Edmonds of said principal sum of forty-four thousand dollars over & above said profits, and may retain all profits above those going to said Edmonds as aforesaid.

Said Squier & Co. shall transact all the business without charge. Said Edmonds shall keep possession of the vouchers to the extent of the principal invested & two per cent. besides, & will exchange, as they become payable, for others of like kind or for cash. He may keep his safe therefor in banking-house of said Squier free of charge.

Said Squier & Co. give their notes to said Edmonds for said $44,000 & interest at ten per cent., to wit, one for forty thousand dollars and one for four thousand dollars, of same date as this memorandum and as a further guaranty & indemnity to Edmonds.

This contract shall terminate upon notice by either party or upon death of either, and then all the moneys so invested shall be returned to said Edmonds, with interest to extent aforesaid, & in case
57 of death of said Edmonds the money shall be paid to his present wife, if she survive him. All monies that may be collected by said Edmonds on said vouchers and received shall be credited to said Squier & Co. on said notes.

Witness our hands this 1st day of Aug., 1883, at Wash'n, D. C.

Words "said Edmonds" above erased before execution "& int. at 10 p'r ct." "on said notes" added.

J. H. SQUIER & CO.
J. B. EDMONDS.

58 Q. Was that the first agreement between you?

A. There was one prior to that, a little memorandum which was not so long as that. I think that was probably given up to Mr. Squier, but I am not positive about it; there was one on a piece of paper, and I think it was given up probably when this was signed. We would meet but a few minutes at a time; I would be on my way home. One that I had drawn up, or that he had drawn up, did not seem to be quite satisfactory, and I think this was probably an amendment of that.

Q. How long before this was that agreement drawn up?

A. It was either the same day or the next day.

Q. Up to that time was there any agreement?

A. No agreement except the notes. I did not understand about the vouchers. I was disappointed that he did not pay the money off-hand when I wanted it. I had been talking with Mr.
59 Cooke about the purchase of certain securities and I wanted the money, and I went to him and told him that I wanted it. He said that he would not be able to pay it. These vouchers were then in my possession. I then had $44,000 worth. It did not vary from that much, if any. We went over them together, and that was our estimate of them. They were in my custody, but I did not know enough about them; so I said, "Mr. Squier, I want some agreement that these vouchers are absolutely mine." I did not know exactly what I needed, for I was not familiar with that kind of security. I said, "I want some memoranda to show that these

vouchers that I have now are mine absolutely. I want an agreement, too, that when one of these vouchers are collected the money is mine. I don't want it reinvested, except upon certain conditions," and I read an agreement to that effect, and on that condition I let the matter run on. He told me that he was negotiating with
60 two or three gentlemen; I cannot recall the names, but I think one of them was Hunter. He said that he was expecting some money from somebody that would take hold of this business, and that he would pay me all off in a lump. I cannot recall all the conversation about that, but that was the substance of what he told me. My holding these as collateral, as I had been doing, I did not know whether it needed an agreement, and instead of going to inquire at the proper office I told him that I wanted some agreement, so that there would be no question about my right to draw the money if need be, and so that they would be my property; but I said, All that I want is my money and the ten per cent., but I want some acknowledgement that these vouchers are my own, and that they were purchased with my money, and that if you take one of them to collect that that money is mine, and that I shall have it unless you are able with that money to buy vouchers and deliver them to me, so as to keep up the amount of interest that
61 you are now paying.

Q. This agreement does seem to provide that you were to have one and a quarter per cent. a month upon $40,000 and one per cent. a month on the $4,000. You did draw from Mr. Squier, did you not, money representing that amount of profit every month?

A. I did take from him the amount called for.

Q. Mr. Squier's books show that you drew for quite a long period prior to his assignment $540 per month, which I believe would be the amount at that proportion of the profits. When you drew that $540 did you make any application of it upon your agreement or upon the notes that you held?

A. I did not write it out, but that was our agreement and he was entitled to that. Our agreement was that the money that I received would be applied on the notes, and the notes were ten per cent. paper.

Q. Have you those notes?

A. I have.

62 Q. Will you let me see them?

A. Yes, sir. At the time these notes were given Mr. Squier claimed that he owed about $40,000; it could not be much over that. I wanted him to pay me one and a half or two per cent. every month, of course to apply on the notes. I wanted him to pay a larger sum. I told him that I had promised a man one or two thousand dollars, and that I was to have it ready in a short time; so he said, Very well, make one of these notes four thousand dollars, and let the matter run just as it did last month. He said, Don't ask me to pay any more per month and I will pay you the four thousand dollars as soon as we make a settlement, and an additional amount enough to make it four thousand dollars; so that this five hundred and forty dollars per month was to apply on this four-thousand-dollar note.

Q. Then really the four-thousand-dollar note, according to your statement of the agreement, was long extinguished?

63 A. It was whenever we came to make a settlement. It was his right to have it extinguished by the off-sets.

Q. You say the first money that you received was to be applied to the four thousand dollars?

A. He said that he would pay it off. There were some credits already due him of payments in excess of ten per cent., but the exact amount we did not agree about at the time.

Counsel for the complainant offers in evidence the two notes, which are in the words and figures following, to wit:

$40,000. WASHINGTON, D. C., *Aug.* 1, 1883.

Six months after date we promise to pay to James B. Edmonds or order forty thousand dollars, for value received, with interest at the rate of 10 per cent. per annum until paid.

Payable at the bank of J. H. Squier & Co.

In case of the death of Mr. Edmonds, payable to Mrs. J. B. Edmonds.

J. H. SQUIER & CO.

64 $4,000. WASHINGTON, D. C., *Aug.* 1, 1883.

Three months after date we promise to pay James B. Edmonds or order four thousand dollars, for value received, with interest at the rate of 10 per cent. per annum till paid.

Payable at the bank of J. H. Squier and Co.

In case of the death of Mr. Edmonds, payable to Mrs. J. B. Edmonds.

J. H. SQUIER & CO.

Q. I understand that you claim that all these vouchers which were in your safe and which he had in hand at the time of his failure belonged to you?

A. Yes, sir; and I was entitled to more, and if I had known it I would have insisted upon it.

Q. There were some vouchers which had been withdrawn that were in the hands of Mr. Squier; you claimed those as your property after his failure?

65 A. Yes, sir; Mr. Squier notified me that he had some vouchers to replace others, and he asked me for a number of them. I have his receipt. He asked me if I would not give up thirty-five hundred dollars' worth of vouchers which were not yet mature, but which would mature in a short time; and he said, You call in and I will give you some more in return. He told me to come in and get them, but I did not do it, and they got mixed with his own papers and I never did get them. I hold his receipt for them. These are all the vouchers that I supposed I had any right to.

Q. Did you know of Mr. Squier being engaged in any other business than the purchase of these vouchers?

A. I only know from what he told me. He said that he was in the general banking business. He said that if at any time I wanted to buy exchange on New York to come and buy it of him, which I did not. He invited me to deposit with him, but as I already had a bank deposit which was satisfactory to me I did not change it.

66 Q. I find on the books of Mr. Squier the following entry: "April 2, 1879. To cash on agreement, $2,000. May 3rd, by dividend, per agreement, $25." Have you any knowledge of that?

A. No, sir; all the agreement there was was that all over ten per cent. should be credited on the principal.

Q. That does not seem to be the agreement as he states it?

A. Well, then, he does not state it right. The only agreement was that whatever ten per cent. per annum amounted to I was entitled to have monthly, and anything beyond that was to go on the principal of the note.

Q. On the 2nd of April you delivered to him two thousand dollars, and on the 3rd of May you received twenty-five dollars. You then held his note for two thousand dollars. Did you apply that twenty-five dollars on this two-thousand-dollar note?

A. I did; I don't know that I did it at that precise time, but when the note was settled that was applied.

67 Q. You never actually wrote it on the note?

A. I do not remember whether I did or not.

Q. Was that two-thousand-dollar note absolutely paid?

A. Yes; by taking other notes. It ran along, and when I got two or three notes there was a settlement made.

Q. Then that note was not settled as a separate payment?

A. No, sir.

Q. Can you fix the time when you made the first settlement by taking new notes?

A. I could not, unless I could see the notes themselves. It is possible I may have some memoranda. I made several settlements; I don't remember how many, but the last one, when the credit was allowed, was, I should say, about a year before the last note was made.

Q. Do you remember the amount of notes which you received at the first settlement?

A. No, sir; I cannot tell a thing about that.

68 Q. Can you form some estimate of it?

A. No; I would not know a thing about it; it would be purely a matter of guess-work.

Q. Do you think that you took such new notes in the year 1879?

A. As guess-work, I would say yes, but it is not positive recollection.

Q. It would appear from the account which I have in my hand, taken from the books of Mr. Squier, that $16,000 were advanced by you in the year 1879. Do you think that you took notes at any time for less than $16,000?

A. I should say it was more than that in that year. I think I must have let him have more money than that.

Mr. WILLOUGHBY: The exhibit there will show.

Mr. WILSON: The exhibit only shows the checks.

The WITNESS: From time to time it was closed up with a note or notes, and that was all there was of it. The principal light I
69 can throw upon it is this, and I do that because the checks were returned to me. I should say it was more than $16,000. I cannot tell exactly, but it is just a sort of an impression that it was more, because I know that it went along fast for some time. I thought these vouchers (accounts) were all right. I had money that I did not know what to do with. I had some money of others, and they expected me to take care of it.

Q. This money that you deposited here was money of your own, was it not?

A. No; but I was responsible for it.

Q. How much of it belonged to you personally?

A. I don't know. I was responsible for it all. Whatever is lost is my loss.

Q. According to your best judgement how much of it was yours personally?

A. I cannot tell you; some of it was my wife's. I had the note drawn in case of my death payable to her.

Q. State, according to your best estimate, how much of it was yours.

70 A. I cannot state how it was. Sometimes I would let the matter run, and if a man wanted his money I would pay it off myself if I could not get it from Squier.

Q. One-half of it was your money, was it not?

A. Yes; probably more than one-half was either mine or my wife's.

Q. I understood you to say that you never did make any application for the moneys which you received from Mr. Squier on the notes which you held?

A. I cannot say that now. I should say I did, but I am not sure whether I did or not. All that I know is that when we would come to a settlement we would settle it up with a credit, and that ended the matter. Whatever the difference was was expressed in a new note which I took.

Q. It seems that on the third day of May, 1879, you advanced another two thousand dollars, and on the fifth of June, as appears by the account from Mr. Squier's books, you received inter-
71 est on four thousand dollars for May, amounting to fifty dollars?

A. I have no doubt that I received that, but I don't recollect it. I may have received it in money or I may have let it go on and handed him more with it. That was very often the case. Instead of taking his money I called it the same as though he had handed me the money and I had given it back to him.

Q. Will you examine this account which I show you and state whether you observe any errors in it?

A. It says here, "In '79 to cash on agreement;" if he means a written agreement there was none except the promissory notes. The

notes and dates, of course, I cannot tell about. I don't know whether the amounts are correct or whether the dates are correct.

Q. You are certain that there was no agreement before August, 1883?

A. Yes, sir; of course. There was the memorandum before that.

Q. How long before that?

72 A. I don't know; for some time there was no written agreement. This thing did not begin in any written agreement, but after awhile I got his memorandum that these vouchers were mine in case it should be necessary to enable me to collect them, because if we should have any difficulty I wanted to be able to show that the vouchers belonged to me.

Q. When was that made?

A. I cannot tell you about that.

Q. Can you tell the year?

A. No, sir.

Q. It was not made in 1879?

A. Well, I should say not.

Q. It might have been made in 1880?

A. Yes, but I cannot tell exactly; it had been running along for some time. There was a memorandum between us, but I cannot state how long it had been so.

Q. You have no copy of the agreement?

A. No, sir; it was simply a memorandum that the vouch-

73 ers that I held were mine; that they were purchased with my money, and (I presume) that whatever was received for them should apply on the notes. It stated that I had loaned him money; that I had his notes for the money that I let him have to purchase the vouchers, and that the vouchers were mine; something to that effect, but it has been so long ago that I would not attempt to tell what it was, except that I know in a general way that that was the agreement we had. You ask me if there are any mistakes about this account. I cannot state, except that that entry of "per agreement" there don't mean anything, as there was no agreement. There are certain words here which I don't exactly know what he does mean by them. He talks about a dividend. I don't know whether Squier had a way of calling interest a dividend or not. I have forgotten whether he did or not.

Mr. Wilson objects to the foregoing question and to the

74 answer of the witness thereto as being immaterial and incompetent as testimony in this case.

Q. There has come into our possession a paper which is all torn to pieces, but which has been put together. See if that is the agreement to which you refer.

A. Well, I should say not. There was something drawn up at one time which Mr. Squier signed but objected to, and so it did not go into effect. This probably may be the paper. There was some briefer memoranda that took its place.

Q. That is your signature to that paper, is it not?

A. Yes; I should think that is my signature, but I don't think

that was ever the agreement. I think that was a thing that was proposed. My impression is that that is the one he declined because it did not provide for the application of any money on the notes.

(Counsel for the complainant offers the above paper in evidence, and it is hereto attached and marked Exhibit W. H. S. No. 2. See next page.)

75 EXHIBIT W. H. S. No. 2.

This agreement witnesseth that Jas. B. Edmonds has delivered thirty-four thousand dollars to J. H. Squier for investment by the latter for the former in the purchase of pay vouchers payable within six months from date of purchase of officers in army, navy, and civil service of the United States, no longer, however, than such investment will yield a monthly profit of two per cent. or more. Said Edmonds shall keep possession of such vouchers to an amount equal to the sum so invested & two per cent. more, and for that purpose may keep his own safe in said Squier's banking-house free of charge, and said Edmonds, out of the profits, shall receive one and one-half per cent. and at the end of each month on the sum so invested, and said Squier shall enjoy the rest of the profits.

Said Squier guarantees the genuineness of each voucher that may be delivered and its payment by the Government and the
76 return to said Edmonds of said principal from over and above the said profits upon the termination of this contract or said investment. Said Squier shall transact all of the business and shall receive vouchers for collection as they mature upon delivering others similar in kind and amount and payment to said Edmonds his said share of profits at the end of each month from this date, and, in case of default in such payment or delivery of other vouchers, said Edmonds may collect the same.

Either party may, upon three months' notice of such desire, terminate this contract, and thereupon all moneys so invested shall be repaid to said Edmonds, besides his said portion of profits to date of payment, by said Squier, and upon such payment any remaining vouchers shall become the property of said Squire and be delivered to him.

Should said Squier die further investments hereunder shall cease. If said Edmonds shall die his wife, surviving him, shall be
77 entitled in her own right to all moneys due on this contract, and she shall be thereby subrogated to his rights herein; and, as a further guaranty of such investment and indemnity against loss, said Squier makes his promissory note to said Edmonds of this date.

Witness our hands, at Washington, D. C., this first day of September, 1880.

Done in duplicate.

J. H. SQUIER.
JAS. B. EDMONDS.

Q. That is all in your handwriting, is it not?

A. Yes, sir. This is one that I drew up at the suggestion of Mr. Squier. I had signed it, and I think that he had signed it. We then discussed it, and I think that we abandoned it. He insisted that it was not necessary to have any agreement; that all I had to do was to present a voucher and it would be paid.

Q. You do not think there was any other memorandum or agreement until August, 1883?

78 A. Yes; there was one that was as I have described it.

Q. You have not that memorandum?

A. No, sir.

Q. You notice that that paper speaks of $34,000. Can you state how that sum of $34,000 was arrived at?

A. No; I cannot. I don't think that that agreement was ever passed between us at all. I don't think that he gave it to me. I don't think that he delivered it to me. I think that on one occasion I drew up something and while he signed it he raised some question about it and it passed by. I think that the point he made was that there was nothing said about application on the notes. I don't think that that was ever executed or that it was ever delivered.

Mr. WILLOUGHBY: The statements which the witness makes that are not called for by me are objected to as testimony.

79 Q. It failed, you think, because it says nothing of the application of money received by you on the notes?

A. Yes, sir; that was one of the objections which Mr. Squier made.

Q. Did he make any other objections?

A. Yes, sir; he said that it was simply a loan, and that I could settle it up from time to time, and that I had the power to draw the money on the vouchers if necessary; so that paper never came to my hands, although I drew it.

Q. I suppose that when you draw up agreements in writing, and they are finally signed by you and delivered, they were intended to represent the understanding between you and Squier, were they not?

A. I was the one that held the vouchers and I was the one that held the writing to explain how I held them. I wanted an agreement to make it absolute. I drew it up and signed it and Mr. Squier signed it. When he came to read it over he made some ob-

80 jection and I did not take it. It was left with him. I don't know whether it was torn up at that time; I presume it was.

Mr. WILLOUGHBY: No, sir; it was not.

The WITNESS: It was not? Well, then, very well. There was a time when I held that amount of notes, and there was a time when I held that amount of securities. I always held the securities myself, and I always held the notes. I don't think that specifies notes.

Q. As to the amount of money appearing to have been received on this account, did you receive the money as stated there?

A. I don't know that I did.

Q. Will you look at this account carefully and see if you can find any error in it?

Mr. WILSON: The entries in the books are the best evidence of that. I object to anything that is a mere copy of the entries being shown to the witness and to his being questioned about it.

81 A. To state that this was correct would require me to recall how much was paid out at one time and how much at another, which I cannot do.

Q. It appears there from the footings that the amount received by you was $28,788.15.

A. I should say that altogether that was somewhere near what I received. I did not receive the whole amount. I never received the $28,000, except upon the theory that it went back. He never paid me, in fact, $28,000; he gave me notes for it.

Q. Your answer makes it that amount.

A. The answer says not exceeding $29,000, but that includes what was coming from him to me, which would make it not exceeding $29,000. It would make just about this amount, but I did not, in fact, receive it from him, because instead of taking it in money I took it partly in notes.

Q. You mean that you took other notes than this $40,000?

A. O, yes; I had other notes.

82 Q. Did you receive that money?

A. I did not receive it in money always. I sometimes received it in money, sometimes in a check, sometimes in his note, and that note went into the sum total which I speak of.

Q. How frequently were such notes made?

A. That I cannot tell. If you will look over the checks which he gave me that possibly may show. For example, if he owed me $500 one day, and he wanted a couple of thousand, I would give him a couple of thousand and would take his note for $2,500. I would simply endorse the check over to him if he brought a check to me.

Q. Then these notes amounting to $44,000 are partly made up of notes which he gave for these amounts represented on this account?

A. Yes, sir.

Q. How much of the $44,000 was made up in that way?

A. I don't know. The $44,000 expresses all that I ever let
83 him have either by not taking what was due me or what I gave him in checks or what I gave him in money, and in every possible way, less the deductions. I think altogether they amounted to more than $44,000. I think they would amount to between $47,000 and $48,000.

Q. This $47,000 or $48,000 was made up partly of actual cash advanced by you and partly by notes given instead of profits?

A. Yes; a small portion of it in that way.

Q. Can you give your best estimate as to the amount of actual cash advanced by you?

A. I cannot, except so far as I have already done by the checks.

I have already stated that except for these checks I could not tell anything about it, except the aggregate which is expressed in these notes.

Q. I see by your checks that you kept a good deal of your money in New York?

A. Some of it.

84 Q. There was no reason for your giving checks or drafts on New York, was there, rather than upon your bank here?

A. No, sir; except that I might have had it there and might not have it here. When I give a check I give it where I have the money and not where I don't have it.

Adjourned until Monday, February 23, at 3 o'clock p. m.

85 WASHINGTON, D. C., *February* 25, 1885.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Willoughby.
Present on behalf of the defendant, Mr. Wilson.

Examination of the witness, JAMES B. EDMONDS, continued.

By Mr. WILLOUGHBY:

Q. Have you any memoranda showing the amounts of moneys received by you from Mr. Squier from which you made up the amount of $29,000 stated in your answer?

A. I had a small memoranda, but I cannot find it. It was a small slip of paper upon which I had made an estimate of the amount as stated in my answer.

Q. Did you have that at the time you made up your answer?

A. I don't think I had it with me when I made it up. I had the amount in my mind. I had looked it up.

Q. Is it mislaid; do you think you could produce it?

86 A. I don't know whether it is among the papers that I gave to Mr. Wilson, or whether I had it at my office or at my house, or whether it disappeared last summer. Last summer, immediately after the failure of Mr. Squier, I made an estimate from the best means I had at my command, and whatever that was I put it in my answer. I made a memoranda then, just simply stating the aggregate.

Q. Have you looked for it recently?

A. I have looked for everything recently. My attorney sent me word yesterday to look up everything I could, and I have done so.

Q. Have you any memoranda showing the amounts of cash advanced by you aside from the checks?

A. I think I have stated that, so far as my recollection serves, it was made up from checks which I happened to have, or of money and checks of Mr. Squier which I returned to him. The only thing

87 I can recall is one item of about $700 which my brother let me have, and which I passed directly over to him. I cannot give the date of that. I made no memorandum of it at the time.

Q. Not in any book, diary, or upon any paper whatever?

A. No, sir; I simply took a promissory note, and if we were about to make a settlement or there was anything due him I simply paid it to him in settlement of the excess over ten per cent., or gave it to him as a loan in addition to the check or money or whatever else I passed over to him.

Q. You cannot, then, profess to be accurate as to the dates or the amounts of moneys received by you or cash advanced by you?

A. No; not in detail, except so far as I have the checks and the aggregate amounts of the notes. I know that I let Mr. Squier have over $44,000. I know that, making proper deductions, on or about the first of May, 1882, he owed me that much. I know that the aggregate sums received were not far from what is stated in my answer, but I cannot give the particulars nor the dates of each.

88 These amounts that I received included checks and money which I returned to Squier—that is, if he gave me a check and I gave it back to him, I counted it the same as if he had paid me the money.

Q. Have you the checks which you gave to Mr. Squier with you?

A. I have those which I drew myself, so far as I have been able to find them.

Q. Have you them with you?

A. I have.

Q. Will you produce them?

A. I will. These are the checks of which a list is attached to my answer showing the dates, the amounts, and the banks upon which the checks were drawn.

Q. I have a list here of payments made to you which I would like to have you examine, and state whether or not they are correct as to the amounts and dates.

A. I can only say that the sum total is not much out of the

89 way, but I cannot answer precisely with regard to it.

Q. Inasmuch as you have no memorandum yourself and we have some taken from the books, I would like to know whether you would question the accuracy of our memoranda.

A. Well, if you say this is correct, I would not want to question it. In answer to this question I wish to say that I am not prepared to admit the correctness of anything appearing upon Squier & Company's books, because he admitted to me that he had deceived and defrauded me all the way through. I shall question the accuracy of anything that is in the accounts of Squier & Co., for the reason that he told me that he had deceived me and defrauded me all along, and that if I proposed to prosecute him criminally he would not get up from his bed alive, and so I must be excused from admitting it.

Q. I would not expect you to admit it, but I thought that by looking it over you might be able to tell whether there was

90 anything in it that you would question.

A. There is this about it: The $28,000 that it is supposed I received I only received by taking a check and handing back—that is to say, he would give me a check at some time, and if he wanted to borrow money, or if I owed him any excess of the ten

per cent., I would hand him back his check in settlement and make the charge, whatever it might be.

Q. I understand you to say that you don't desire to question the accuracy of any item in that statement?

A. I don't know anything about it.

Q. You don't dispute it?

A. I neither dispute it nor admit it. From what Mr. Squier told me of his having carried on a systematic and fraudulent practice towards me, unless I positively knew, I would not like to admit it nor would I like to deny it, unless I knew it to be false. That is all I can say about it.

Q. When did he tell you this?

91 A. It was a short time after his failure. His wife sent for me and said that her husband wished to see me. He was then in bed. This was some days after his failure. I had heard that he was likely not to get up; that he was likely to die; and then I heard that he was better. I was sent for and went into his room, and he said, Many of the vouchers which you now have are fraudulent; I have deceived you systematically from the beginning to the end. I am not sure that I can give his exact language, but that was the substance of it. He says, You will know about it pretty soon, and I want to know whether you are going to attempt to send me to the penitentiary. He spoke of his wife and two little girls. He said that, for himself, he had no care to live; that he had already suffered more than death.

(Mr. Willoughby objects to the foregoing conversation as not being responsive to the question.)

Q. Did he state in what respect he had deceived you?

92 A. Yes, sir. He said that for the last year or such a matter he had noticed that I was disposed to take what he said about it, and that he had not returned the right amount of vouchers, and that there would be fraudulent vouchers among them; that he had hoped to be in a position to give me honest vouchers, but had not been able to do so; on the contrary, he took honest vouchers from me and substituted fraudulent ones; that he would not be able to state or give me the amount of the vouchers—neither the amount of the fraudulent ones nor the amount of the honest ones. I said, You told me the other day that you had some vouchers laid aside for me. He said, I have not; I have some vouchers there, and part of them were purchased with money which I got from collections made from your vouchers, but some of these which I in-

93 tended to hand back to you were fraudulent, because I could not purchase the requisite amount to pay you what you were entitled to.

Q. Did he tell you what he meant by fraudulent vouchers?

A. No, sir; he did not explain that. He was very sick, or seemed to be. He was in his bed, and his wife came into the room and there was something of a scene. I told him to explain that when he got up.

Q. You have no other writings bearing upon this case, except those you have shown?

A. The only other writings I can find were some notes which he sent me asking me to come down and exchange vouchers. Sometimes it would be in the shape of a note, and sometimes it would be upon one of his bank cards. If it came on a card it went into the waste basket. I find in looking over my files of letters that I have some of those notes.

Q. Will you let me look at them?

A. I will. I had forgotten that they had not all gone —
94 the waste basket. I find twenty notes from Mr. Squier written on his banking-house heading, and containing also the card of his business, and they are to the following effect:

WASHINGTON, D. C., *October 28th*, 1880.

James B. Edmunds, Esq.

D'R SIR: Please call to-day and exchange some vouchers.

Very truly, J. H. SQUIER & CO.

I received also notes of a similar character, dated as follows: May 27, 1880; December 18, 1879; June 21, 1880; June 29, 1880; March 22, 1880; June 26, 1880; October 19, 1880; February 20, 1880; February 24, 1880; March 1, 1880; July 20, 1880; July 29, 1880; April 29, 1880; November 24, 1880; November 19, 1880; November 1, 1880. All these notes are in the same language as the one above. The original of one of these notes is hereto attached and marked Exhibit W. H. S. No. 3.

EXHIBIT W. H. S. No. 3.

BANKING-HOUSE OF J. H. SQUIER & CO.,
No. 1416 PENNSYLVANIA AVENUE,
95 WASHINGTON, D. C., *Oct.* 28, 1880.

James B. Edmunds, Esq.

D'R SIR: Please call to-day and exchange some vouchers.

Very truly, J. H. SQUIER & CO.

The note of February 14, 1880, calls for exchange of a voucher; the note dated December 30, 1880, says, "Call at 3.30, if convenient;" the note dated May 6, 1880, says, "Please call to-day early as convenient."

Q. Was there not a memorandum of an agreement made and signed by General Schwenck, as well as Mr. Squier and yourself, in the beginning of your business relations with Mr. Squier?

A. No, sir; Mr. Squier brought Mr. Schwenck's note and wanted me to accept that instead of vouchers, and he stated that Mr. Schwenck was a man of property in New York city. I have forgotten whether I had then seen Mr. Schwenck. I only met
96 him in an incidental way; perhaps at a dinner. I had no special acquaintance with him. There was no agreement. I

never had any agreement with Mr. Schwenck of any kind, except that Squier brought his note and said that he would like to have me accept Mr. Schwenck as security, instead of taking vouchers.

Q. Did not Mr. Schwenck, instead of merely signing notes, sign in the nature of a guarantee in behalf of Mr. Squier?

A. Not that I know of.

Q. Was there any agreement prior to the one exhibited here the other day of September, 1880, reciting the indebtedness of $34,000?

A. I am under the impression that there was some memorandum before the amount got to be so large as $34,000. I cannot fix the precise time when the first was made, but it originated in his asking me for vouchers and not replacing them. I did up to a cer-
97 tain time invariably when he asked me for a voucher return another and which he assured me was just as good, and that continued until the amount of the loan had reached many thousand dollars, but I cannot state precisely how many, when he told me that by reason of some change in the paymaster's department it was necessary to send the vouchers to a distance to be collected, and that as it would be troublesome to me, and as I did not want to be bothered with that sort of thing, he would do that himself; but he did not wish to be required to furnish others, for he had a call for a large amount and had to send a large proportion of them away for collection. He had told me that he was buying vouchers for other people in large amounts, but I do not remember the men. I told him I wished my affairs kept by themselves, and he promised it should be so. He says, You put it in writing; make that just
98 as strong as you please, for in dealing with customers and getting money I regulate it according to their wishes. Some trust me with all their vouchers, and I keep their vouchers separate.

Mr. WILLOUGHBY: All this testimony which is not responsive to the question I do not wish to be considered as drawing out, myself, and I object to it.

The WITNESS: The first agreement was simply a few words promising on his part that the money collected on my vouchers should be reinvested in others, and those vouchers returned to me; and if those vouchers could not be invested at such a rate as he thought safe or which he doubted, he would return me the money. Of course I cannot tell the precise time when that began, but I am inclined to think it was before the loan amounted to $34,000. I state this to show the reason for making any memorandum at all.

Q. You have stated that part of the money advanced by
99 you belonged to other persons. Will you state to what other persons such money belonged?

A. I have been accustomed to handle money for my family, for my wife's family, and for different parties.

Q. Can you state accurately what proportions of this money belonged to other parties?

A. I cannot now. Some of it belonged to my brothers, but the exact amount I cannot tell.

Q. Can you estimate it?

A. Well, some thousands of dollars altogether.

Q. Estimate it as closely as you can.

A. It would be pure guess-work. Some of it belonged to my wife, but that would be pure guess-work to attempt to tell the amounts. Some belonged to my wife's sisters, but the amount of that would be guess-work.

Q. What amount did you yourself return for taxation?

100 A. I don't know whether I was ever called on to make any return.

Q. You did not make any?

A. I don't remember that I did.

Q. Was any made on behalf of your wife?

A. Well, I cannot tell whether she was ever called upon.

Q. Have you any memorandum by which you can show what portions of this money belonged to other persons than yourself?

A. I have not. I have either paid them, or am indebted for what I did. Some of the money was borrowed money. Some of the money that I let Mr. Squier have I borrowed at his urgent request.

Q. Of course, the money that you advanced by checks was deposited in the banks to your credit?

A. If it had not been it would not have been paid. Mr. Squier asked me what I could borrow money for. I told him I could probably borrow it at 8 per cent. He said that I would make two per cent. upon whatever I could borrow. He sometimes coaxed me to doing that.

101 Mr. WILLOUGHBY: I did not ask for that.

The WITNESS: You asked me whose money it was. Some was borrowed money and some was not; but, in fact, all that I use for other people was substantially borrowed, because I held myself responsible for it all.

Q. Have you any books or memoranda showing the amount of money borrowed from other parties?

A. No; I did not keep any books at all.

Q. Can you name parties from whom you borrowed money at 8 per cent.?

A. Yes, sir; I can name my sister-in-law, I can name my brothers, and I can name my brother-in-law.

Q. Largely in the family?

A. I borrowed some outside. I borrowed some from Gilman, Son & Co., and I borrowed from others. I do not recall now all whom I borrowed from, but I borrowed from several.

102 Q. Did you make any agreement in writing between September, 1880, and August, 1883?

A. I had settlements with Mr. Squier.

Q. The question is was there any written agreement between you?

A. I should say that we made some memorandum, the substance of which I have given, which would specify the amount which I would have at the date of settlement, which I would have loaned to him or invested in securities which I held at the time. If in making a settlement the amount seriously changed we would take a

memorandum stating that the amount was so much and that I had his note for that amount; that the amount was invested in these securities, and that if he collected them before the notes matured and could not invest them in like securities the money should come to me whether the notes were matured or not.

Q. I notice sometimes that in comparing the amounts as
103 shown by the books with your checks there is a variation—as, for instance, your check of December 2 calls for $1,000, while the books show advanced by you $820. That, I suppose, was made up in cash?

A. I cannot tell.

Q. Was it not probably so?

A. I cannot tell anything about his books.

Q. Your check is $820, while he admits advanced by you $1,000. Can you account for that difference?

A. All that I can say is that at times my check was not the entire loan. I may have handed him back his own check or money out of my pocket if I happened to have it, or perhaps a check of somebody else. I recall one case of that kind of, I think, $700, that I had of my brother's, and I recall that from an incident that happened at that time.

Q. I notice, for example, one check of yours for $2,200, dated February 2, 1880, while on the back there is shown to have
104 been advanced to him by you $2,500. You would account for the discrepancy in that way by saying that the difference was made up by an advancement of cash or somebody's elses check?

A. You are assuming that his book is correct.

Q. Well, if it be correct.

A. If the book is correct it was made up in some other way. Those cases happened.

Q. I will ask you if you can account for the discrepancy in any other way, assuming the books to be correct?

A. I have told you all that I know; that there would be cases when, in addition to my check, I gave him either money or his own check or the check of some one else. I don't know how else to account for it. If he had $2,500 at that time, and my check is only for $2,200, he must have gotten it in some other way.

Q. Do you remember advancing to him cash at any time when you did not at the same time give him a check?

105 A. Oh, yes.

Q. Can you name any items?

A. Well, I think that $700 item that my brother handed me. I don't think I gave him any check then. I don't remember whether he gave me a note for it or whether I gave him additional money and took his note for the whole amount. Whenever he borrowed money he gave me his note for the amount. Whenever we settled and there was anything due him it either reduced the rate or else I paid it up in some other way, but I cannot tell you whether it was by one of these checks or in some other way.

Q. That is the only item you can specify, is it, when you advanced him cash and did not at the same time give any check?

A. I am satisfied that there were such occasions.

Q. Can you specify any other item?

A. I cannot specify the exact amounts of the payments
106 that I made him except so far as my recollection is refreshed by these checks. The notes which I took at the time ended the matter. When we settled I took a little memorandum as to the amount that I had then invested in these securities or that I supposed that I had invested in them.

Q. Where did you reside before you came to Washington?

A. In Iowa.

Q. What place in Iowa?

A. Iowa City.

Q. In what year did you come to Washington?

A. In the winter of 1877–'8.

Q. Were you practicing law in Iowa?

A. Yes; in former years, but my health gave out a good many years ago and I gave up the business. I had not been practicing for some time before I came to Washington.

Q. What was your occupation?

A. Getting my health was the principal thing I had in view.
107 *A.* I am living in Washington very largely for the sake of the climate.

Q. But before you came to Washington?

A. Well, I practiced law a good many years before I came to Washington.

Q. What was your occupation in Washington after you came here?

A. I had no settled occupation.

Q. Were you practicing law or in the real estate business?

A. To some extent.

Q. Did you practice before Congress and in the departments?

A. I made one argument before a committee for an old client of mine. That is all.

Q. How long had you been in Washington before you made the acquaintance of Mr. Squier?

A. Over a year.

Q. Had you invested any money in Washington before you invested in this business with Squier?

A. I perhaps had made some purchases. I do not recall exactly what.

Q. I mean in business.

108 A. Oh, no. Not in any regular business. That season I was building my house.

Q. Who introduced you to Mr. Squier?

A. I cannot say.

Q. Do you remember your first interview with him?

A. No; I think I probably met him at some party, but don't remember who introduced him. I think I first met him by playing a game of whist with him.

Q. Can you remember your first business interview with him?
A. I cannot tell you the particulars of the first interview.
Q. Well, your first business interview.
A. My first business interview was at my room where I was boarding.
Q. How come that interview to occur?
A. I don't know.
Q. Did he come to see you?
109 A. Yes, sir; he came to see me to see if he could get some money from me, and told me a great deal about his affairs. He came to see if he could arrange to borrow some money or if I knew of some place where I knew he could borrow money upon perfect security.
Q. You had some acquaintance with him before that time?
A. I had perhaps met him a week or two before, at some party at some residence in town. I had perhaps played whist with him. I had been introduced to him there as a banker, of Washington; I cannot tell by whom.
Q. At that first interview did you let him have any money?
A. I did not.
Q. How long after that before you did?
A. Well, it was not very long. At his first interview he talked about various things. He said he would buy stocks for me if I wanted to buy anything.
110 Q. Did he explain the nature of these officers' accounts at his first interview?
A. Yes, sir. He told me of various ways that he had of investing money for himself and his customers. He said that he took money on deposit and paid 6 per cent. or eight per cent., and that they were entitled to draw it out when they pleased. He told me that he invested for others, but I cannot remember their names. He told me he was buying these very vouchers for somebody whom he named and whom I could see if I wished, but I never saw him. One of the men that he named was a gentleman living in Alexandria, but I don't remember his name. I did not see these men, but he referred me to them. He said that he was still doing business for them in the same line, but they had no more money to
111 put in. He said that he could use $200,000, if he had it, in discounting the pay of officers.
Q. Do you remember the interview at which you let him have the first $2,000?
A. I remember something about it.
Q. Where was it?
A. At my room.
Q. You gave him a check then, did you?
A. I arranged to do it, if I did not do it.
Q. You took his note there?
A. Yes, sir; I think he brought it to me.
Q. Was it understood then that you were to make further advances of the same character?
A. I think he said that he would probably have more vouchers,

and that if he did he would come to see me about it. I did not promise to let him have any more. I first took $2,000 worth, but I did not promise to take any more. After awhile he came to
112 me to let him have $2,000 more.

Q. Where was that interview?

A. At my rooms.

Q. That was just a month afterwards, was it not?

A. Probably in that neighborhood.

Q. Did he give you the $25 on account of the first $2,000 at that time?

A. I don't know whether he did or not. I don't know whether that was paid promptly or not.

Q. Mr. Squier's books show that he received a check from you on the 3d of May for $2,000, and on the same day you received $25 from him. Is that correct?

A. I don't think that they occurred on the same day. I remember when he paid me the first $25.

Q. Was it about that time?

A. It was probably about that time.

Q. Your second check appears to be dated May 1st for $2,000, and Mr. Squier's books show that on May 3rd, 1879, he paid
113 you $25. Is that correct?

A. The check is correct. I cannot tell about his book.

Q. You don't know that it is incorrect?

A. If it does not differ from the check it is not incorrect.

Q. Mr. Squire's book shows also that on the 5th day of June you received from him $50. Do you remember that?

A. I cannot say that I remember it in the way of being able to tell you all about it.

Q. Do you remember receiving it?

A. I have no doubt that I received it in some way, but how I cannot tell you.

Q. The book also shows that on the 3rd of July you received $50. Do you remember receiving that?

A. No; I presume I did receive it, but I cannot give you the exact particulars of it.

Q. And so August 1st, $50; September 2nd, $50; October 4th, $50. Do you remember receiving those amounts?

114 A. I cannot tell you about that.

Q. You have no reason to suppose it to be incorrect, have you?

A. I presume that I got it in some way, but I cannot say that I positively remember it, though I cannot recall it; it is impossible; if I could I would tell you so.

Mr. WILLOUGHBY: This paper has been examined by the witness for the purpose of asking him whether he could state that any item of moneys appearing from that paper to have been received by him is incorrect.

Said paper is as follows, and is marked Exhibit W. H. S. No. 4.

Mr. WILSON: I object to the introduction of this paper in evidence, as it is incompetent and not the best evidence.

"EXHIBIT W. H. S. No. 4."

J. H. Squier & Co. in Acc't with Jas. B. Edmunds.

1879.				1879.			
Apr.	2	To cash on agreement	2,000 —	May	3	By div. for Apr	25 —
May	3	" " " "	2,000 —	June	5	" in'st on $4,000 for May	50 —
Oct.	4	" " " "	3,000 —	July	3	" " " " " June.	50 —
	31	" " " "	2,000 —	Aug.	1	" " " " to Aug. 1.	50 —
Nov.	25	" " " "	2,000 —	Sept.	2	" for Aug. dep's't at Riggs.	50 —
115							
Nov.	25	To cash by agreement	2,000 —	Oct.	4	By div. for Sept	50 —
Dec.	2	" " on "	1,000 —	Nov.	1	" freight bill on safe	5 83
	12	" " " "	1,000 —		5	" bal. div. to Nov. 1	131 15
	27	" " " "	1,000 —	Dec.	2	" div. to date	180 —
1880.				1880.			
Jan'y	31	" " " "	1,000 —	Feb'y	2	" int. for Jan'y	300 —
Feb'y	2	" " " "	2,500 —	M'ch	1	" " " Feb'y	367 50
	10	" " " "	1,500 —		31	" " & div. for M'ch	397 50
Apr.	5	" " " "	1,000 —	May	3	" div.	442 42
	10	" " " "	1,000 —	June	1	" on int. for May	100 —
June	9	" " " "	1,000 —		1	" bal. " "	350 —
	16	" " " "	1,000 —	July	2	" div. for June	467 50
July	2	" " " "	1,000 —	Aug.	2	" int. to Aug. 1st	495 —
Aug.	31	" " per "	1,000 —		31	" div. for Aug	495 —
Oct.	25	" " on "	1,000 —	Oct.	1	" cr. on note	510 —
Nov.	8	" " " "	500 —	Nov.	2	" " " agreement	510 —
	15	" " per "	500 —	Dec.	2	" " " "	536 25
Dec.	1	" " on "	1,000 —		30	" c'k on Nat. Met. B'k	555 —
1881.				1881.			
M'ch	1	" " " "	3,000 —	Jan'y	31	" " " " " "	555 —
Oct.	4	" note	1,000 —	M'ch	1	" " " " " "	555 —
Dec.	3	" "	1,000 —	Apr.	1	" " " " " "	600 —
1882.				May	1	" " " " " "	600 —
M'ch	3	" contract	2,000 —	June	2	" " " " " "	600 —
			$37,000 00	July	2	" " " " " "	600 —
				Aug.	1	" " " " " "	600 —
					31	" d'ft on N. Y	600 —
116		Am't bro't up	37,000 —	Sept.	30	By c'k on Nat. Met. B'k	600 —
				Oct.	30	" " "	610 —
				Dec.	1	" " "	610 —
					21	" cash	24 —
					31	" c'k on Nat. Met. B'k	496 —
				1882.			
				Jan'y	31	" " "	520 —
				Feb'y	28	" " "	520 —
				M'ch	31	" " "	540 —
				Apr.	29	" " "	540 —
				May	31	" " "	540 —
				June	30	" " "	540 —
				July	21	" cash	40 —
					31	" c'k	500 —
				Aug.	31	" "	540 —
				Sept.	30	" d'ft on N. Y	540 —
				Nov.	1	" c'k	540 —
					30	" "	540 —
				Dec.	28	" cash	100 —
				1883.			
				Jan'y	1	" c'k	440 —
					22	" cash	40 —
				Feb'y	1	" c'k	500 —
					23	" cash	40 —
				M'ch	1	" c'k	500 —
					31	" "	540 —
			37,000 —	May	1	" "	540 —
117		Am't bro't up	37,000 —	May	21	By cash	40 —
				June	1	" c'k	500 —
				July	2	" "	540 —
				Aug.	1	" "	540 —
					28	" "	540 —
				Oct.	1	" "	540 —
				Nov.	1	" "	540 —
				Dec.	1	" "	540 —
					31	" "	540 —
				1884.			
				Jan'y	31	" "	540 —
				Feb'y	29	" "	540 —
				M'ch	31	" "	540 —
				May	1	" "	540 —
					31	" "	540 —
							$28,788 15

There is no ledger acc't with Edmunds. This account is made from the cash book, d'ft stub book, and check stub book.

All c'ks were on the Nat. Met. B'k.

J. B. S.

118 Q. State whether you can mention any item in this statement that is incorrect.

A. As to the correctness of the paper which is now handed to me I cannot tell.

WASHINGTON, D. C.,
February 27, 1885—3 o'clock p. m.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of defendant, Mr. Wilson.

Direct examination of the witness, JAMES B. EDMUNDS, continued.

By Mr. WILLOUGHBY:

Q. When do you think that the agreement referred to as the one which finally resulted in the agreement of 1883, and which is referred to on page 11 of the record, was drawn up?

A. My impression is that two were drawn up substantially alike, but one was found to be in some way defective and was cast aside, and one was amended and made the contract between us. I
119 do not think that there was ever but one agreement existing at a time. What I mean is this: I think there was one drawn up which was pretty nearly like this, and this probably was substituted for that. My impression is that I undertook to draw it up a little better; that I had a poor pen or something. It was on a small piece of paper. I have forgotten exactly the circumstances. All that I remember is that this (being Exhibit No. 1) was pretty nearly what Mr. Squier was willing to sign, making it a little more specific. I will not be very positive. I am inclined to think that when about to sign he made some objection to it, and that I took a new sheet—a full sheet, perhaps—and, with some verbal correction, it was made satisfactory to him and he signed it. I cannot recall everything about it, but that is the sort of an impression that I have in my mind.

Q. If I understand you, this paper was drawn up because
120 the other one was not exactly satisfactory?

A. I have a sort of an idea that we had had but one paper before; that we had signed only one, and that once or twice I had thought of making it a duplicate, so as to give him a copy, but I did not do it; and in this instance I do not know but that I was going to do that. At any rate there was some objection; then I copied the paper, leaving out some few words which he thought ought not to be put in, and then I accepted the paper from him as amended.

Q. He retained the other paper, did he?

A. I don't recollect whether he retained it or whether it was thrown into the waste basket.

Q. You don't know of his having a duplicate of this?

A. No; I think I intended to duplicate this. He called my attention to some objection, and I said, Very well, I will make
121 the correction by doing so and so; and when I got it to suit him he said all right, and gave it to me—that is, he consented

to my taking it, and the other one that I had intended as a duplicate probably went into the waste basket. I cannot recall the facts as to that.

Q. You don't know that, do you?

A. My impression is that there never was but one accepted between us.

Q. Do you know whether the other was retained by him?

A. My impression is that we did not count it as anything, just as on a former occasion we would write it and throw it down.

Q. That was imperfect because it did not provide for the application of the moneys received by you upon the notes; is that correct?

A. What other?

Q. This imperfect paper.

A. My recollection is that the other one was very much like this, only it was drawn up on a smaller piece of paper, scratched
122 off rather hastily, and it was intended to have been a duplicate, if he had asked for one, but he said he did not care about keeping one. It was all right, only he called my attention to the fact that I did not say that my notes were to draw ten per cent. interest, and did not say that whatever moneys I had were to be credited on the notes. I said, All right, you are entitled to that, of course; that is our understanding, and I put it right in. He said, That is all right now; and I took it with me.

Q. Where were these agreements drawn up?

A. I think at his office.

Q. They were both drawn up there?

A. That is my impression.

Q. Both drawn up there and both signed, and whatever delivery there was was made there at one time?

A. I think the other was signed, and when he made the objection I said I would write it anew, and I did so. I think I rather
123 helped it, but perhaps did not get in the amendment what he wanted. We differed somewhat as to what should go in. I told him that I would make it in better shape, but it was not intended as a duplicate—that is, we did not intend to leave both outstanding as substitute agreements, because if it had been so the other should have been amended the same as this.

Q. All that I want to know is, the substantial difference — the two agreements.

A. The substantial difference was, if I recollect, that the other was drawn up in haste. I cannot state exactly what it was. I find that on this there are two or three insertions made at two or three points that he called my attention to, and as they were proper I did what he requested me to do before taking the paper away.

Q. Do you think that the other paper was like this substantially, except the interlineations?

124 A. There may have been interlineations in that. I cannot tell you about that; it was drawn up hastily.

Q. You can't answer that question?

A. No, I cannot state. I think I offered to draw it up again and

leave him a duplicate and to make the other so that it would read like this, but he said he did not care about it.

Q. You think both were drawn up on the same date and at the same time?

A. Well, I have answered all I can now recall about it. I think that this was substituted for the other, just as on a former occasion when he signed one and it was substituted for another. He usually signed before he read them. He would sign them and I would say so and so is what I suppose to be right; then he would take it and look it over and if there were any objections to it they were made then, and if it was anything that I could fix by some inter-
125 lineations I did so, and if not I threw it in the waste basket and drew a new one.

Q. Do you remember why it was that you provided in that agreement for one per cent. per month upon $4,000 while the rest was at one and a quarter per cent.?

A. I was asking him to pay $1,000 per month. He said, Don't ask me to pay any more. I told him that I had got to have some of this money; that I had not intended to leave it with him as long as I had done; that I was arranging to make other uses of money or give it back to those from whom I had borrowed it, and that I must have $1,000 per month. He then represented to me that he was negotiating for $100,000, and that then he would pay me off altogether, but he did not want me to ask him to pay any more than he had paid the preceding month, which was $540. We had failed to agree exactly as to what offset he was entitled to on this $44,000.

126 Q. The question is why did you provide for one per cent. per month on $4,000 and one and a quarter per cent. on $40,000?

A. It was because he did not wish me to ask him to pay any more than he had paid the previous month.

Q. Why did you make the distinction between the $40,000 and the $4,000?

A. Because in a few days we agreed to settle, and whatever he owed me, enough to make the $4,000, he would pay me. That was a short matter; but on the other I wanted as large a payment as I could get, as it was to run a little longer. He said that he would pay me in a few days, and he says, Make it sixty or ninety days at the outside. I made it ninety days. I told him that I did not want any failure; I wanted to rely upon the payment of it.

Q. That is the only reason you can give?

A. Yes; that he did not want to pay any more and that
127 this $4,000 was to be settled in a few days, perhaps.

Mr. WILLOUGHBY: Mr. Edmonds, will you produce a list of the vouchers that were taken by you from the safe after the assignment of Mr. Squier, and also the amounts of money which you have collected from the different parties?

A. Yes: I will give you a list as it was given to me, and which, so far as I know, is correct. That list is in court.

(It is agreed by and between counsel that the list of vouchers filed in the case of Crawford against Squier and others may be filed in this case.)

The witness agrees to produce a list of the amounts of money collected upon these vouchers hereafter.

Cross-examination by Mr. WILSON:

Q. Will you state if you had anything to do, directly or indirectly, with the employment by Squier & Co. or by Mr. Squier
128 of Mr. Hersey in April, 1879, or at any other time?

A. Nothing whatever, either directly or indirectly or remotely. I will add that I was never in Mr. Squier's bank; that I never knew who his clerk was until probably May or June, 1879, after I had loaned him two thousand dollars, and probably after I had loaned him four thousand, and perhaps more. I did not go to his bank. I did not know who his clerk was, and never had seen him. The first I ever knew of Mr. Hersey's being a clerk at the bank was when Mr. Squier told me he had gotton a clerk in his bank that he had had once before, a young man of whom he thought very much, and he perhaps told me his name. One day on the street, or possibly it was at the bank, a young man spoke to me and asked me if I was not Mr. Edmonds. I said yes. Well, he
129 said, I am Mr. Hersey. I am a clerk in Mr. Squier's bank, and I have heard my father speak of you. His father was a man with whom I had a slight acquaintance, having met him at a boarding-house. That was the first I knew of Mr. Squier's clerks, whether he had one clerk or more, and who that clerk was.

Q. State in a concise and clear manner the beginning of your business relations with Mr. Squier, how the business was carried on, and what it was.

A. Mr. Squier, when he came to talk with me about money, said that from something he had heard some one say he thought it likely that I might have some money either of my own or of others that I might wish to use. He showed me his business card. He had a business card which contained the substance of what is found on one of his letter-heads. He told me that he had been engaged as a banker
130 and broker in the city of Washington for ten or twelve years—I do not remember the exact time—and that if I wished to make any purchases or to loan money he would be very glad of my custom; that he bought and sold bonds, mining stocks, and stocks of various kinds; that he bought on margins and dealt in various ways, but that the thing that he specially would recommend a customer to take was a line of securities which he had not quite money enough to carry; in fact, he said he could easily use two hundred thousand dollars, and that line was dealing in the pay vouchers of army officers. He said that he discounted or purchased them at certain rates, and that for the sake of doing so he was already borrowing money at the rate of one and one-half per cent. per month and even as high as two per cent. per month. He mentioned the names
131 of some parties whom he was dealing with in that line especially. I cannot recall the names. I only remember that in some of

his conversations he named a man from Alexandria, and he also named some people in Washington. The negotiation finally resulted in his bringing to me some vouchers to explain what they were and how good they were and in my concluding to take some of them. He suggested that, as I would only take ten per cent. interest, as I objected to taking more, *that* he would still pay me at the higher rate, and on the settlement of the rate I could give him credit on the principal. I said, Very well, I will do that. Upon making some inquiries I found that people said that he had been engaged in the banking business, as he had professed to have been; that they had dealt with him or loaned him money, and that they had always found him an honorable man; that they believed him to
132 be an honest man, and that any representations that he made could be relied upon. Soon he brought me a note with Gen. Schwenk's name on it and his own name also, and wanted me to take that instead of vouchers. I was to let him have two thousand dollars and he wanted me to take the note. I told him that I did not know about Gen. Schwenk. I never had but very slight acquaintance with him, having met him at a dinner. That was all I ever did know of him until very recently. The first loan was for two thousand dollars, and I took his note for the two thousand dollars, perhaps, at three months and took the vouchers. At the end of a month, or at some other time, he would come to me and say, One or more of these vouchers have now matured; if you will let me have it I will give you another one that is running along,
133 and that leaves you just the same security. When I let him have the second two thousand dollars the same thing was repeated. He would come to my room with a voucher and say, Here are some more vouchers. Some of yours are maturing, and I wish them to collect, and I will substitute these others for them, which I permitted. When I finally had some of his notes—two or three or four—I don't remember the exact number or the exact date—I would take a single note representing the aggregate of the previous ones and settle with him for the excess that I had received over ten per cent. per annum.

There was no written agreement between us of any kind whatever other than the promissory note, and no proposal for one until the aggregate loans amounted to several thousand dollars, say somewhere between fifteen and twenty-five thousand dollars.
134 Then he told me that the vouchers must be sent off by mail some days in advance. He had to send them off on account of some rule adopted by the Department, and that some few of them had to go as far as Texas or to other places along the border. He asked me if I would not leave them with him to collect, and he said that before the time would come around he would return to me a similar amount of equally good vouchers. I rather objected to that, and we discussed the matter. I said, I think this business must stop pretty soon, and suppose you are not able to invest them at such a rate as will compensate you and at the same time give me what I am entitled to have. Why, he said, in such an event as that I will return you the money whether your notes are due or

not; but, he said, you need have no fear about it; I will bring you the vouchers or return you the money, and you may put that
135 in writing and make it just as strong as you please. I said, You say that you are buying vouchers, and that you are buying stocks of all kinds and dealing as a banker and broker for so many people. I would like to keep my affairs separate. He said, That is all right. I do that now with some of my customers.

Mr. Willoughby objects to any testimony as to what the agreement was outside of the written agreement.

The WITNESS: After some further inquiry with regard to the man's character for integrity I concluded to trust him with the collection of some of these vouchers, and to keep my affairs by themselves as well as may be I drew a memorandum stating, what he declared to be true, that the vouchers I then held, which were equal to the aggregate loan, had been purchased with my money—that is, with the money that I had loaned him. I took a statement from him stating that I had invested in vouchers, which
136 I held, that amount of money, and that he, as they matured from time to time, might be allowed to collect them, but that he should charge nothing for the collection and should reinvest that money in other vouchers of an equal value and of a similar kind.

Parol testimony as to the contents of the written agreement is objected to by Mr. Willoughby without accounting for the loss of the written agreement.

The WITNESS (continuing): And that if he could not invest in the same kind of vouchers the money should be returned to me, although the note might not have matured. It also stated that he had given me the notes and that whatever sums I should receive should be credited on the notes.

From time to time as we made settlements similar statements were made, which would occupy eight, ten, fifteen, or twenty lines.

Testimony as to these statements is objected to unless they
137 are produced or their loss accounted for.

The WITNESS: When a second settlement was made the preceding statement was cancelled or destroyed. That statement was always delivered to me when we made the settlement of the matter, and I took one note representing them all, and then we would destroy the memoranda and I would take another, so that all the time he was borrowing money we were from time — making settlements.

The amount of the loan was not disclosed by that statement. Instead of taking a new note whatever was due him was deducted, and that was done by handing him back his own check, which he brought with him, or by making it up in some way. I can only recall specifically a single transaction where it was otherwise, and that was on one occasion when my brother gave me seven hundred dollars to be delivered to Mr. Squier, which I did deliver to

138 him and for which I took no note, but it was on one of these settlements. I do not remember what was the amount then due him on the settlement, but I only remember the circumstance of his taking that amount. I gave it to him in the same shape that my brother gave it to me. One of these settlements occurred on the 1st of September, 1880, and then the aggregate amount which he held and which I had invested in vouchers in my possession—at least represented them to be *bona fide* vouchers, and I supposed them to be such—was thirty-four thousand dollars, and I drew off this paper which is called Exhibit No. 2, and was proposing to draw a duplicate, as I told him it was a document and that he might want to keep a copy of —, although before that time he had never had one. He said that he did not care for a copy, but he called my attention to the fact that this did not specify that he had
139 given me his notes at ten per cent. and that whatever sums I should receive above should be credited on the notes.

All this testimony is objected to by Mr. Willoughby.

The WITNESS: I proposed to interline that paper or put it in somewhere, but I finally said, Very well; I will state it substantially as I have before in a former one; so I drew it up in a shorter form, and I supposed that this one was cancelled; at least it was not understood to have been a contract existing at that time. Why it was not destroyed then I do not know, for it was not a contract; it did not express the intention of the parties. The parties did not agree to it, although I see that Mr. Squier's name is appended to it.

The foregoing testimony is objected to as incompetent.

The WITNESS: The shorter one I took with me with the
140 thirty-four-thousand-dollar note, drawing ten per cent., which was the amount which he owed me on that day over and above all payments that I had received. There was another settlement about the first of May, 1882, and how many others I cannot tell. At that time another memorandum substantially like the one which I had taken before was drawn up. That may, perhaps, have been an additional stipulation in it.

This testimony is objected to by Mr. Willoughby as incompetent.

The WITNESS: Such, as for instance, that he would not charge me any rent for my safe, or some little thing like that. At that time all excesses over ten per cent. were settled for and adjusted. After that time there was no settlement of the excesses. In May, 1883, we were to have had another settlement.

Q. May, 1882, was the date when all the payments were adjusted?

A. Yes, sir; adjusted, not by giving up aggregate amount
141 of my notes, for that was kept the same and, perhaps, even enlarged. I did not make the aggregate amount of my notes any less. I never did that in any of my dealings with Mr. Squier.

The aggregate amount kept increasing until I got to the maximum. Forty-four thousand dollars was the maximum. I let him have forty-seven or forty-eight thousand dollars, but that was made up by my returning to him his own check, or by my giving him the check of some other person, or by my giving him money.

On the 1st of August, 1883, we were to have had another settlement, but for some reason we were not quite certain about some item. I was insisting upon a payment beyond what he had ordinarily paid me, and told him the occasion I had for asking it. I told him that I must have my principal; that this had been going away beyond what had been talked of. He asked me to give
142 him further time, so that instead of a settlement I took a note of four thousand dollars. We were in fact to have had a settlement some time before, but I was very busy and had neglected it from time to time. For the four thousand dollars he gave me a note at three months, but promised to adjust the matter in a very few days.

Parol explanation of this contract is objected to by Mr. Willoughby.

The WITNESS: The contract which is marked Exhibit No. 1 was drawn up. It was the longest one that had ever been executed between us. He renewed his objection that I was not making the note business quite what he thought it ought to be, especially as a settlement was not made and he was giving me his notes for forty-four thousand dollars. I made two or three interlineations and asked him if that would be sufficient, and he said yes. He said, Yes; I know it to be all right any way if I pay my notes, and
143 that I expect to be able to do in a short time, for I am negotiating for a hundred thousand dollars, and if I have the money I will pay the notes whether they are mature or not. He named one or two parties and said that he thought he could count on both, and that it would only be a question as to which of the two he would take.

During all that time I never looked at one of his books. I never asked him about his business affairs or his profits or anything else, and learned what he voluntarily told me from time to time, which was that he was engaged in buying and selling all kinds of stocks, and he offered to buy for me in New York at any time on margins. For a long time I could not go near his bank without his showing me the daily price current and his explaining that he had arrangements made to receive orders of all kinds and to transmit
144 them in New York, and he asked me if I did not want to buy something else. My invariable answer was that if these vouchers were as he said they were that that was enough, and that I did not wish to engage in any other transaction with him, and in this only for a limited time, because I did not know how soon I would have to return some of the money that I was borrowing. I told him that I might be called on to return it at any time, and that I must be prepared to return it, and that the whole transaction between — was of a temporary character at best.

If he was not, then, a man of considerable fortune and if he was not buying vouchers for others and investing for other people as a banker and broker to the extent of one or two hundred thousand dollars, he greatly misrepresented the facts to me.

The foregoing testimony is objected to by Mr. Willoughby as incompetent.

145 The necessity, in part, for having any written contract with him was simply to have his unequivocal written pledge that it was the money that I had loaned him that had purchased the vouchers in my possession, and that if I entrusted any portion of them to him the money was to be mine, to be by him reinvested for me in similar securities or the money returned to me.

Objected to by Mr. Willoughby as incompetent.

The WITNESS: And not to be used for any other purpose or mixed up with any of his transactions for others.

Objected to by Mr. Willoughby as incompetent.

All this business, from April to November or December, 1879, was transacted not at his bank, but at my room, and I had not visited his bank upon any business transaction, so far as I can recollect.

145½ My house was to have been finished the 1st of November. Some time prior to that date, being in New York, and thinking that I would want a small safe for my house, I stepped in on Broadway — a small one such as I thought would suit me, and arranged to send for it when I wanted it. I see that it was about the last of October. I see from Herring & Company's bill and postal that about the last of October it was shipped to me and the bill sent me. The bill was sent me November 3rd, 1879. I went to the railway station to find out about it, but not finding it there I asked them to arrange to send it to Mr. Squier's bank, having in the meantime talked with him about it, as I have already stated in my direct examination. Not knowing what the freight bill would be, I sent word to Mr. Squier that I had ordered it to be sent there, and asked him if he would be kind enough to pay the charges, and told him that I would hand it to him when I met him; all of which was done.

146 The vouchers were then at my house or where I was boarding, and it ran along in this way for a little while, but in a month or so, I presume in consequence of his wanting the vouchers, as he occasionally did when some officer wanted to take up his voucher, and because I wished to keep them secure, I took them to my safe and put them in it. It was a combination lock of which no one but myself knew the combination or ever did unless, indeed, I may have told it to my wife. It was a place where, if we were leaving town, I deposited my silverware; where I deposited title deeds or other valuable papers that I might have, and none except such as belonged to me ever went into the safe, and no one but myself ever opened the safe from the time it went there. I only went into the bank once or twice a month, and only for the purpose of

putting something in or taking something out of the safe that belonged to me.

147 The notes or short letters which I have produced here shot that he occasionally sent for me to exchange vouchers, as contemplated by the memorandum between us. Ordinarily, whenever I would return a voucher he would give me another in return, so that it was not often that I trusted him with vouchers for collection, because he usually had what he assured me to be equally good vouchers which he would hand to me in place of those I returned to him, so that the greater portion of the time I actually had vouchers in my safe equal to the amount of the loan which I had made him. When he wanted a few days in which to get the vouchers he invariably gave me a receipt, which read somewhat like this: Received of James B. Edmonds so much in vouchers for collection to be reinvested for him in similar vouchers or the money returned. After awhile the receipts were a little less formal.

148 On May 20th, 1884, is the last exchange of vouchers that he asked of me. He said that there were certain vouchers which he had to send away and he did not have the vouchers to replace them, and so at his request I delivered them to him and took from him this receipt, which reads as follows:

$3,759.00. MAY 20TH, 1884.

Received of James B. Edmonds three thousand seven hundred and fifty-nine dollars in vouchers to be reinvested in same early in June, 1884.

J. H. SQUIER & CO.

A few days after this as I was going home to my dinner I met him on the street. He motioned to me and said, I have those vouchers laid aside for you, and if you will call at the bank you can have them. I was very busy at that time and intended to have called to receive the vouchers and put them in my safe where they

149 belonged, but I forgot about it until some time afterwards. Probably about two weeks after that my wife read to me from the Star the announcement that Squier & Co. had failed.

I supposed that this $3,759 of vouchers were laid away with my name upon them, and that as they had been purchased with my money they belonged to me, but I very soon learned from Mr. Smith that there was no way of discriminating the vouchers that belonged to me from those which belonged to any one else. He told me that he thought Mr. Squier was dying; but in a few days Mr. Squier sent for me and we had the scene and time that I have explained, in which he told me that many of the vouchers that I already had were fraudulent, and that there were not as many as I thought, but that he had by false representation induced me to take a less quantity for a greater until he had reduced it to some small amount, he did not know how much, and

150 that there were a great many fraudulent vouchers, but he did not know how many. He then told me that he had deceived me from the beginning; that he had suffered the pangs of death a

hundred times; that he had intended to make it all square, and that he ought to have failed a long time ago, and that the reason why he had reduced the vouchers and the reason why he had given me fraudulent vouchers was because other creditors had been so clamorous for money that he had been compelled to pay them out of the proceeds of my loan. He mentioned several of his creditors who had called upon him and who had threatened him if they did not get money as they demanded that they would take some steps about it, and so he used the money that he was to have kept invested for my security. He had taken that and paid it out to them.

151 I will state that when I first commenced taking vouchers of Mr. Squier that I was very particular for a year or two to examine them. Of course I did not know whether they were genuine or not; they appeared to be so and that was as far as I can judge. I found him in every instance to do precisely as he had agreed to do. I had become acquainted with so many citizens who had spoken of him so highly that I had gotten into the habit of trusting him, so that about March, 1883, I became accustomed to hand him over a package of vouchers and letting him select what he said he required and taking back what he handed me without going over them carefully, because I had such implicit confidence in the man's honor and integrity.

I see that one of these checks by Squier & Co. is payable to the order of Gilman, Son & Co., New York, August 31st, 1881, for $600.

152 I have no doubt that that went to my credit at the bank of Gilman, Son & Co., and that satisfies me that on the 1st day of August I had a settlement of our affairs with Mr. Squier up to that date. What the total amount was that he owed me at that time I cannot recall, but I remember that just before I went North I had a settlement with him. I did not expect to be back at the end of the next month, and I told him, when he asked me where he should remit, to send the money to Gilman, Son & Co. It is the date of the Gilman, Son & Co. check that enables me to say that on the first of August, 1881, I had a settlement with him, and at that date I had his note for the whole sum which he owed me, and the interest exceeding ten per cent. had been settled for, and if it amounted to less than six hundred dollars I handed him back the check that he gave me, and if it amounted to more I added to it in same way. I cannot exactly tell how it was. I

153 only remember that there was a settlement at that time.

From May, 1882, all the checks which he drew in my favor I retained, and whatever they show Mr. Squier to be entitled to credit for he ought to have credit for it on the notes—that is to say, on the two promissory notes, $44,000, bearing interest at ten per cent. from June, 1884, subject to an offset of any sum in excess of ten per cent. which I received from about the 1st of May, 1882.

The foregoing testimony is objected to by Mr. Willoughby as incompetent.

The WITNESS: And to such further offset as they are entitled to

by reason of the collections that I have made on vouchers in my possession when Squier & Co. failed, which were those which were contained in my safe and of which a list is filed in court.

I never learned from Mr. Squier precisely which were
154 fraudulent vouchers and which were not. I remember that he told me that all the naval allotments were fraudulent and to see whether that was so. I presented one of them for payment, and they repudiated it so promptly that I never made the attempt again, but I made a package of it with some others which the officers told me were fraudulent, and told Mr. Jesse B. Wilson, after he was made receiver, that I had a great number of these vouchers that I would return to him if he wished them, but he did know whether it was his duty to receive them, and I, being involved in a lawsuit, left them with my attorney to be delivered to Mr. Wilson whenever he saw fit to take them.

I will state that all the sums that Mr. Squier ever paid me were brought to me in checks, so far as I can recollect, and I invariably accepted the amount, unless it would be by way of a settle-
155 ment, when I would return him his check. When I reached the amount of forty-four thousand dollars I absolutely declined to let him have any more money, and the last four or five thousand dollars was taken as a loan just for a few days. I began to find out that when Mr. Squier got anything for a few days it was somewhat in the nature of a permanent investment. He begged so hard to be allowed to retain it and was such an amiable, persuasive neighbor and his whole family was so amiable that I confess that I took some interest in them all, and, having such absolute confidence in his integrity, I could not well refuse to let him have money so long as I had it or could borrow it from him.

I have no doubt that I received both of the drafts on Gilman, Son & Co. I presume that they went to my credit. I do not know that they did, but I presume so.

156 The six checks, amounting to seven thousand dollars, which I have produced and which I gave to Mr. Squier and which do not appear on his books are not all the mistakes which his books exhibit, because the seven-hundred-dollar item is not mentioned and other sums are not mentioned which he got from me by my returning his own check or otherwise, making a difference in the aggregate of between three and four thousand dollars. The sums which his books seem to charge against me, amounting to between twenty-eight and twenty-nine thousand dollars, is probably correct as an aggregate, but some of those checks went back to him again to make the forty-seven or forty-eight thousand dollars that he had received from me—that is to say, I credited myself with all the checks I ever drew and all the checks of anybody else
157 or the money that I happened to have and I let him have; then I charged him with all the money he ever let me have, whether I returned it to him or not, and the grand total of the sums which I let him have would be between forty-seven and forty-eight thousand dollars, and the grand total of the moneys that I received from him prior to his failure was between $28,000 and $29,000.00.

I looked this matter up after his failure and after Mr. Squier got out with the view of going over the figures with him to have an adjustment of the matter, but we never accomplished it. We left it until I came back from my summer trip, when I expected to be able to do it, but in the meantime he committed suicide and it never was done.

Q. The checks payable to Squier & Co. were all duly endorsed by him and the proceeds of them received by him, so far as you know?

158 A. Yes, sir; every check that I have produced on this examination was drawn against deposits which I had in the house on which the checks were drawn, and he received in each case the amount specified in the check to the use of Squire & Co. As a general rule he would bring me vouchers or bring me his note, and I would give him a check for the amount of the note. As the vouchers matured every month he would give me vouchers due in one, two, three, four, five, or six months, and when the officer would come and want a particular voucher or wanted all of his vouchers, then, upon substituting others, I would deliver to him the ones he wanted.

Q. Did you have any understanding or did you have any business transactions with Squier & Co. other than the loan of the moneys to which you have referred and the repayment thereof?

159 A. None whatever of any kind, although I was frequently urged by him to allow him to invest money for me in other ways, but I never invested in anything except these vouchers, and upon the understanding all the while that my money was to be kept in them, and when not invested in them it was to be returned to me, whether the notes were due or not. The object and intent of that was to keep my affairs by themselves and not to mix them with his bank affairs or with his business with other people.

Objected to by Mr. Willoughby as incompetent.

The WITNESS: I never shared in the profits of any other transactions that he had, and I suppose that they amounted to hundreds of thousands of dollars. There was no talk of any copartnership, and there was no understanding or thought or arrangement of anything of the kind.

Objected to as incompetent.

160 Redirect examination by Mr. WILLOUGHBY:

Q. What do you mean when you say that you returned checks to Mr. Squier that he drew in your favor?

A. He usually borrowed money on the first or the last of the month. He usually paid me what was due on amounts already advanced him on the 1st or the last of the month, so that if he wanted more money he usually came to me with his check to pay the interest that he had agreed to pay, at the same time saying, Here are some vouchers and I want you to take them, so that even, perhaps, when I would be loaning him money I would, perhaps, give him back his check, indorse it if necessary, and give him enough to in-

crease the loan; or, if he did not ask for an increase of the loan, I would say, if it was a case of settlement, There is so much due me and I owe you that amount as excess of interest, and I would
161 give him his check back and settle the matter up and then take a memorandum.

Q. You drew all the money represented by these checks, did you not?

A. I did not.

Q. Do you mean that he would make out a check to you and then you immediately return it to him?

A. Yes, sir.

Q. How many times do you think this was done?

A. As many times and probably more times than we had adjustments of our affairs. Probably for the first year or so he made his checks to bearer, and then I had only to pass them back; but I called his attention to the fact that if he drew his checks to bearer either one of us might lose them, and that I thought it would be better if he would make them to order, and then if — took them back I put my name on the back of them and handed them to him.

162 Q. You did receive about twenty-nine thousand dollars from him?

A. I don't think it was quite twenty-nine thousand dollars, including those checks that I handed back to him.

Q. I understand you to say that he is entitled to a credit of twenty-eight or twenty-nine thousand dollars?

A. Yes, sir; if I am given credit for all that I handed back to him, but not otherwise. Mr. Squier as regularly a- clock-work came to me every month with a check, and yet every time that we had a settlement that check was likely to be used in making the settlement by my refunding it to him, or if I was making a loan and a settlement at the same time that was counted in and the check given for the amount. I always credited him with every check that he ever brought me and every sum that he ever paid, and I charged him with every check and every sum that I ever gave him.

163 Q. You have no memorandum whatever of any such check returned by him to you, have you?

A. No; I knew the aggregate amount from a little slip that I had, which I thought I could find. I had it after his failure.

Q. What sort of a memorandum was it?

A. It was a little slip from a kind of a pocket-book that I was accustomed to carry with me.

Q. Was that memorandum simply the aggregate, or did it contain the different items?

A. It contained the different items.

Q. What has become of that memorandum?

A. I do not know. I- was a slip of paper, and I supposed that I had it, but I could not find it. I thought Mr. Wilson had it among my papers. I cannot tell where it is.

Q. There are no memoranda or agreements in existence to

your knowledge except the two dated September 1st, 1880, and the one dated August 1st, 1883?

A. The one in September, 1880, never was an agreement.

Q. Are there any others?

A. No; the other agreements consisted of memoranda, and when we settled we would destroy the memoranda. The memoranda would be a recital that I had transferred him so much money which he had invested, and that I had his notes and that he was to be allowed to reinvest or to return to me the money.

Q. You have no memoranda of the amounts of money advanced over forty-four thousand dollars?

A. I have no memorand- of the forty-four thousand.

Q. You have none of the amounts over forty-four thousand?

A. I have no memoranda except the checks. They are the only thing that I can give except that seven-hundred-dollar item, which I can give from recollection. The aggregate I know, because I carried that in my mind and knew from time to time what it was.

Q. You have spoken of fraudulent vouchers. I want to know exactly what you mean by fraudulent vouchers. Were they forged?

A. That was the term that Mr. Squier used when he told me. I asked him what he meant by fraudulent vouchers, if they were forgeries. He said not necessarily so, but that he would explain that to me in the future, which he never did.

Q. Did you ever discover that a voucher was forged, or that one was given which did not represent money due or to become due?

A. I only know from what the officers have since told me. Some of them have told me that they were forgeries.

Q. What ones were forgeries?

A. I remember Colonel Forsythe. He declares that the voucher I have of his is an absolute forgery.

Q. Any others?

A. Yes; one other, but I cannot remember his name.

Q. Have you Col. Forsythe's voucher?

A. I have.

Q. Have you it with you?

A. I have not.

Q. Will you produce it?

A. I will, and I will produce the letter wherein he says it is a forgery. The naval allotments were absolute frauds. There were no such allotments. When I asked him what he meant by fraudulent he said, They are such that you can put me in the penitentiary if you are disposed to, but it would not be so much punishment to me as to my wife.

Q. Can you name any sum of money that you at any time returned to him in excess of the ten per cent.?

A. I remember the seven-hundred-dollar item particularly.

Q. Any other?

A. I cannot recall the exact amount, but I am inclined to think that the last time we had a settlement that was done; but I will not say that.

167 WASHINGTON, D. C., *March 10th*, 1885.

Redirect examination by Mr. WILLOUGHBY:

Q. Did you have some vouchers of Gen. Schwenck's among those that you received after the assignment of Squier & Co.?

A. I don't understand that I received any. I had them before the assignment. I had vouchers of Gen. Schwenck delivered to me by Mr. Squire and in my possession before his failure.

Q. Do you know on what consideration Mr. Squier received those vouchers?

A. I don't know anything about it, except that he told me that all vouchers that he gave me had been purchased with my money—that is, with money that I had loaned him. He told me that uniformly, that they were purchased with my money, because I was so very particular about it.

Q. Have you collected those vouchers?

A. They have all been paid to me.

Q. What was the amount of them?

168 A. I have forgotten.

Q. Did you know before you collected them that they had been held by Mr. Squier as collateral for money due from Schwenck to Squier?

A. I did not, except that Mr. Schwenck told me after part had been paid that Mr. Squier also had his notes—that is, he gave his note and the vouchers to Mr. Squier for some money. I never knew anything of the note before that time.

Q. Did he not explain to you that Mr. Wilson, as receiver of Squier & Co., had an acceptance of his, and that these vouchers were held by Squier as collateral for the payment of that acceptance?

A. He told me recently that the note or acceptance which he had given to Mr. Squier was secured by these vouchers as collateral; but I told him that I had purchased these vouchers for their

169 full face value without any knowledge of anything in respect to them, except that Mr. Squier had purchased them with my money.

Q. How long has it been since you collected them?

A. Some of them I collected in June or July last. Some of them he stopped the payment of, but he finally left the matter to the determination of the paymaster and upon his decision they passed to my credit.

Q. Within a month or so?

A. Yes, sir; I should think so.

J. B. EDMONDS.

JAY B. SMITH, a witness of lawful age, called by and on behalf of the complainant, being first duly sworn, is examined by Mr. WILLOUGHBY:

Q. State your residence and occupation.

A. Washington, D. C.; I am a clerk.

170 Q. State what were your relations with Mr. Squier before his assignment.

A. I was his clerk and book-keeper.

Q. For how long?

A. For four or five years.

Q. You were the assignee of Mr. Squier?

A. Yes, sir.

Q. Are you familiar with his books?

A. Yes, sir.

Q. Have you any of Mr. Squier's books with you?

A. Yes, sir.

Q. What have you?

A. I have three day books and three ledgers.

Q. By whom were these books kept?

A. By myself and Mr. Squier jointly, and by a clerk by the name of E. E. Hersey.

Q. You are familiar with the books as they were made up from time to time?

A. Yes, sir.

Q. What have you to say as to their accuracy so far as you know?

A. I believe them to be correct.

Q. What book have you in your hand now?

A. The day book or cash book.

171 Q. Will you turn to the date of May 3, 1879, and state what appears from it as to the moneys received by Mr. Edmonds?

Mr. WILSON: I object to this book as incompetent evidence to charge the defendant in this case and as immaterial. I also object to the question and to the introduction of the books in evidence.

A. Under date of May 3rd, 1879, appears: "James B. Edmunds. Dividend for April, $25."

(The answer is objected to by Mr. Wilson as incompetent, immaterial, and inadmissible, as no proper foundation has been laid for the introduction of the entries in the book and no proof has been introduced showing in whose handwriting the entry inquired of with respect to was made.)

Q. In whose handwriting is that entry?

A. That is in Mr. Hersey's handwriting.

By Mr. WILSON:

Q. Where is Mr. Hersey?

A. I don't know.

172 Q. Are you reading from one of the regular books of the business?

A. From the day book in use at that date.

Q. Is that a book of original entry?

A. Yes, sir.

Q. Any other book used from which entries were transferred to that?

A. No, sir.

Q. Were you at that time in the employ of Squier & Co.?
A. No, sir.
Q. Then you don't know what books they were using?
A. Yes, sir.
Q. You have no personal knowledge, have you?
A. Yes, sir.
Q. What personal knowledge have you?
A. I was in the employ of Squier & Co. on the 15th of April, 1879, and this book is a continuation of the book that I was keeping at that time. This entry is on May 3rd, 1879.
Q. You were not there at the time and on the date of that entry?
173 A. I was in the office on the day of that entry.
Q. In the employ of Squier & Co.?
A. No, sir.
Q. Do you mean to say that the transactions of Squier & Co. were first entered in this book?
A. I believe them to have been so entered.
Q. No blotter was kept?
A. No, sir.
Q. You are sure of that?
A. Yes, sir.

By Mr. WILLOUGHBY:

Q. State, if you can, the precise date when you were in the service of Mr. Squier.
A. I was employed by Squier & Co. on the 13th of August, 1877, and continued in their employ until the 15th of April, 1879. I was next employed on April 5th, 1880, and continued to the time of the assignment.
Q. Will you read from that book the items of money appearing to have been received by Mr. Edmunds from Mr. Squier according to their dates?

174 (The question is objected to by Mr. Wilson because the best evidence is not called for and because the witness is incompetent to prove these entries and for the reason that the books do not show nor propose to show that any money was received by Mr. Edmonds from Mr. Squier.)

Exhibit W. H. S. No. 5.

J. H. Squier & Co. in Account with Jas. B. Edmonds.

	Received from Edmonds.		Totals.		Paid to Edmonds.	
1879.				1879.		
Apr. 2	Advanced by E.	2,000		May 1	Int. for Apr., 1¼ %	25
May 3		2,000	4,000	June 1	" May, "	50
Sept. 17		1,000	5,000	July 3	" June, "	50
Oct. 4		3,000	8,000	Aug. 1	" July, "	50
" 10		2,000	10,000	Sept. 2	" Aug., "	50
" 31		2,000	12,000	Oct. 4	" Sept., "	50
Nov. 25		2,000	14,000	Nov. 1 & 5	5,000 for 1 month. 3,000 " 28 days 2,000 " ⅔ of a mo.	137
28		2,000	16,000			
Dec. 2		1,000	17,000			
12		1,000	18,000	Dec. 2	Int. for mo., 1½	180
27		1,000	19,000			
1880.				1880.		
Jan'y 2	Div. for Dec., 262 50 737 50	1,000	20,000	Jan'y 1	16,000 for 1 mo. 3,000 " ½ " 262.50	262 50
31		1,000	21,000	Feb'y 2	Int. for Jan'y, 1½ %	300
Feb'y 2		2,500	23,500	M'ch 1	23,500 for 1 month 15,000 " ⅔ of a month 1½	367 50
10		1,500	25,000	" 31	25,000 for 1 month. 1,000 " 25 days. 1,000 " 15 " 1½	397
175						
M'ch 6		1,000	26,000	May 3	28,000 for 1 month. 1,000 " 26 days. 1,000 " ⅔ month 1½	443
16		1,000	27,000			
27		1,000	28,000	June 1	Int. for May, 30,000 1½	450
Apr. 5		1,000	29,000			
10		1,000	30,000	July 2	30,000 for 1 month. 1,000 " ⅔ " 1,000 " ⅓ " 1½	467 50
June 9		1,000	31,000			
" 16		1,000	32,000	Aug. 2	Int. on 33,000.00 for 1 mo. 1½	495
July 2		1,000	33,000	" 31	" " " " " "	495
Aug. 31		1,000	34,000	Oct. 1	" " 34,000 " " "	510
Oct. 25		1,000	35,000	Nov. 2	" " " " " "	510
Nov. 8		500	35,500			
" 15		500	36,000	Dec. 2	35,000 for 1 month *534.75 500 " 25 days. *$1.25 500 " 16 " 1½	536 25
Dec. 1		1,000	37,000			
				" 30	Int. on 37,000, 1 mo., @ 1½ *c'k	*c'k 555
1881.				1881.		
M'ch 1		3,000	40,000	Jan'y 31	" " " " " "	555
Oct. 4		1,000	41,000	M'ch 1	" " " " " "	555
Dec 3		1,000	42,000	Apr. 1	" " 40,000 " " "	600
1882.				May 1	" " " " " "	600
M'ch 3		2,000	44,000	June 2	" " " " " "	600
				July 2	" " " " " "	600
				Aug. 1	" " " " " "	600
				" 31	" " " " " "	600
				Sept. 30	" " " " " "	600
				Oct. 30	40,000, @ 1½ % 1,000, " 1	610
				" 30	40,000, @ 1½ % 1,000, " 1	610
				Dec. 31	40,000, @ 1¼ % 2,000, " 1	520
				1882.		
				Jan'y 31	40,000, @ 1¼ % 2,000, 1	520
				Feb'y 28	40,000, 1¼ % 2,000, 1	520
				M'ch 31	40,000, 1¼ % 2,000, 1	540
				Apr. 29		540
				May 31		540
				June 30		540
				July 21		540
				" 31	40 500	540
176						
				Aug. 31		540
				Sept. 30		540
				Nov. 1		540
				" 30		540
				Dec. 28	Cash 100	
				1883.		
				Jan'y 1	Do. 440	540
				" 22	Cash 40	
				Feb'y 1	Do. 500	540

*In pencil.

Exhibit W. H. S. No. 5.—Continued.

Received from Edmonds.				Paid to Edmonds.	
			1883.		
			Feb'y 23	40	
			M'ch 1	500	
					540
			31		540
			May 1		540
			" 21	40	
			June 1	500	
					540
			July 2		540
			Aug. 1		540
			28		540
			Oct. 1		540
			Nov. 1		540
			Dec. 1		540
			31		540
			1884.		
			Jan'y 31		540
			Feb'y 29		540
			M'ch 31		540
			May 1		540
			31		540
					*29,050 75

*In pencil.

177 & 178 (The foregoing answer is objected to by Mr. Wilson as being incompetent and immaterial.)

Q. What proportion of these entries were made by yourself and designate by whom the other entries were made?

A. All of those entries marked with my initials in the foregoing list were made by myself. Those marked with the initials of E. E. Hersey were made by him, and those marked with the initials of J. H. Squier were made by him.

Q. Have you made an examination of the books of Mr. Squier in connection with the checks produced by Mr. Edmonds so as to arrive at a result of the whole amount of money advanced by Mr. Edmonds appearing from such checks and from the book?

A. Yes, sir.

(Question and answer objected to as incompetent, irrelevant, and as being secondary evidence.)

Q. Have you made a statement showing such result, and is this paper which I hand you that statement?

179 A. Yes, sir.

Q. Will you state how that was made up?

(Question objected to by Mr. Wilson as incompetent and immaterial.)

A. This is made up from the books of Squier & Co. and from the exhibit to Edmonds' answer. Those entries in red ink do not appear upon the books of Squier & Co.

(Mr. Wilson objects to the answer of the witness as being incompetent and immaterial.)

Adjourned till Friday, February 27, at 3 o'clock p. m.

180 WASHINGTON, D. C., *February* 27, 1885—3 o'clock p. m.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Willoughby.
Present on behalf of the defendant, Mr. Wilson.

Direct examination of the witness, J. B. SMITH, continued.

By Mr. WILLOUGHBY:

Q. Will you read from the books of Mr. Squier the items of money appearing to have been advanced by Mr. Edmonds, with their dates?

(Mr. Wilson objects to the question as immaterial and incompetent; as no foundation has been laid for the question or for the introduction of the books, or for any entries in the books.)

A. The following entries appear from the books of Squier & Co.: "April 2, 1879, J. B. Edmonds, on agreement, $2,000." This entry is in the handwriting of Mr. Squier. "May 3, 1879, James B. Edmonds, on agreement, $2,000." This entry is in the handwriting of Mr. Hersey, who was a clerk to Squier & Co. at that time, to the best of my knowledge and belief. "October 4, James B. Ed-
181 monds, on agreement, $3,000." This entry is in the handwriting of Mr. Hersey. "October 31, J. B. Edmonds, on agreement, $2,000." This entry is in the handwriting of Mr. Squier. "November 25, J. B. Edmonds, per agreement, $2,000." This entry is in the handwriting of Mr. Squier. "November 28, James B. Edmonds, by agreement, $2,000." This entry is in the handwriting of Mr. Hersey. "December 2nd, James B. Edmonds, on agreement, $1,000." This entry is in the handwriting of Mr. Hersey. "December 12, James B. Edmonds, on agreement, $1,000." This is in the handwriting of Mr. Hersey. "December 27th, J. B. Edmonds, on agreement, $1,000." This is in the handwriting of Mr. Squier.

(All the foregoing entries were made in the year 1879).

"January 31st, 1880, James B. Edmonds, on agreement, $1,000." I believe that to be in Mr. Hersey's handwriting. "February 2, James B. Edmonds, on agreement, $2,500." That is in Mr. Hersey's handwriting. "February 10, James B. Edmonds, on agreement, $1,500." That is in Mr. Hersey's handwriting. "April 5, J. B. Edmonds, on agreement, $1,000." That is in Squier's hand-
182 writing. "April 10, James B. Edmonds, on agreement, $1,000." That is in Squier's handwriting. "June 9, James B. Edmonds, on agreement, $1,000;" Squier's handwriting. "June 16, James B. Edmonds, on agreement, $1,000." That is in Squier's handwriting. "July 2, James B. Edmonds, on agreement, $1,000." That is in Squier's handwriting. "August 31, James B. Edmonds, per agreement, $1,000." That is in Squier's handwriting. "October 25, J. B. Edmonds, on agreement, $1,000." That is in Squier's handwriting. "November 8, J. B. Edmonds, agreement, $500." That is in Squier's handwriting. "November 15, J. B. Edmonds, per agreement, $500." That is in Squier's handwriting. "Decem-

ber 1, J. B. Edmonds, on agreement, $1,000." That is in Squier's handwriting.

(All the foregoing entries appear in the year 1880.)

"March 1, 1881, J. B. Edmonds, $3,000;" Squier's handwriting. "October 4, 1881, J. B. Edmonds, note, $1,000." That is in Squier's handwriting. "December 3, 1881, James B. Edmonds, note, $1,000." That is in Squier's handwriting. "March 3, 1882, J. B. Edmonds, on contract, $2,000;" Squier's handwriting.

183 (All these entries appear on the receipt side of the cash book.)

Q. Have you made up a statement showing the amount of money advanced by Mr. Edmonds as it appears from the books and from the checks produced by him?

(Question objected to as immaterial and incompetent.)

A. Yes, sir.

(The answer is also objected to by Mr. Wilson.)

Q. What is the result of your investigation?

A. The total amount appearing from the books of Squier & Co. and from the exhibit filed by Mr. Edmonds in his answer is $44,000 advanced by Mr. Edmonds to Squier & Company.

Q. What appears to have been the result on the 1st of September, 1880?

(Question objected to as incompetent & immaterial.)

A. On the 1st of September, 1880, the joint account shows an advance to date by Mr. Edmonds to Squier & Co. of $34,000.

Q. Have you made up a statement from the books and from the checks exhibited by Mr. Edmonds in connection with the amounts appearing to have been paid by Squier from time to time?

A. Yes, sir.

184 Q. Is this paper which I hold in my hand that statement?

A. Yes, sir.

(Question and answer objected to by Mr. Wilson as incompetent, immaterial, and irrelevant.)

Q. Explain how that is made up.

A. The cash book of Squier & Co. shows that on April 2, 1879, there was received from Mr. Edmonds $2,000, and the same book shows that on May 1st there was paid to Mr. Edmonds, as interest, $25. That I find was one and one quarter per cent. per month on $2,000. On May 3rd I find an advance of $2,000, making a total of $4,000, and on June 1st interest was paid to Mr. Edmonds to the amount of $50. That I find to be one and one-quarter per cent. per month on the $4,000. On September 17 the books of Squier & Co. do not show any credit to Mr. Edmonds, but the check that he produced shows that he paid to Squier & Co. or delivered that check to

them for $1,000. On July 3rd interest is paid to Mr. Edmonds in the sum of $50; on August 1st, $50; September 2nd, $50; and on October 4th, $50, each of these amounts being one and one-
185 quarter per cent. per month of the amount advanced to that date. On October the 4th this account shows an advance by Mr. Edmonds to Squier & Co. of $3,000; on October 10th, $2,000; on October 31st, $2,000. On November 1st and 5th there was paid to Mr. Edmonds $137, which I find is the interest on $5,000 for one month, on $3,000 for 28 days, and on $2,000 for two-thirds of a month at the rate of one and a half per cent. a month. On November the 25th Mr. Edmonds advanced to Squier & Co. $2,000, and on November 28th, $2,000, making $16,000 to date. On December 2nd, 1879, Squier & Co. paid Mr. Edmonds $180, which is one and a half per cent. on $12,000 for one month—that was on hand November 1st, having been on hand one month. On December 2, 1879, there was advanced to Squier & Co. $1,000; on December 12th, $1,000; on December 27th, $1,000, making a total to date of $19,000, $16,000 of which was on hand and $3,000 of which was advanced during the month of December. I do not find from the books of Squier & Co. that any money was paid to Mr. Edmonds for the month of December, 1879, but at the rate of one and one-half per cent. per month on the $16,000 for the month of December, and the same rate on the
185½ $3,000 advanced during December for one half of a month, would show that there was due Mr. Edmonds on January 1st, 1880, $262.50. I also find that on January 2nd, 1880, Mr. Edmonds gave Squier & Co. a check for $737.50, which, with the amount due him for December, would be $1,000. This, with the $19,000 already advanced, would make $20,000 on January the 2nd, 1880. On the 31st of January, 1880, there was advanced another thousand dollars, and on February 2nd Squier & Co. paid Mr. Edmonds $300, which is just one and one-half per cent. per month on the amount of money on hand during the month of January, 1880.

(Mr. Wilson objects to the answer of the witness, to his references to the schedule, and to all his calculations and inferences from the entries on the books as being wholly incompetent, irrelevant, and immaterial, and not in any way binding upon the defendant.)

The WITNESS: On February 2nd there was advanced $2,500 and on February 10, $1,500. On March 1st Squier & Co. paid Mr. Edmonds $367.50, which is one and one-half per cent. per month
186 on the $23,500 on hand during the whole month of February and on the $1,500 advanced February 10th for two-thirds of a month. On March 6 there was advanced by Mr. Edmonds $1,000, on March 16 $1,000, and on March 27th $1,000, making the total amount advanced to date $28,000, $3,000 of which was advanced during the month of March. On March 31 Squier & Co. paid Mr. Edmonds $397, which is equal to one and one-half per cent. per month on the advances on hand March 1st, and the same rate on $1,000 for 25 days, on $1,000 for fifteen days, and on $1,000 for four

days. On April 5th Mr. Edmonds advanced $1,000 and on April 10th $1,000, making the total to date $30,000. On May 3rd, 1880, Squier & Co. paid Edmonds $443, which is equal to interest at one and one-half per cent. on $28,000 for one month, and on $1,000 for 26 days, and on $1,000 for two-thirds of a month. The total advances to May 1st, 1880, as shown by this account, is $30,000. On June 1st Squier & Co. paid Mr. Edmonds $450, which is equal to one and one-half per cent. per month on $30,000. On June 9, 1880, Mr. Edmonds advanced $1,000 and on June 16th $1,000. On July 2nd Squier & Co. paid Mr. Edmonds $467.50, which is equal to interest
187 at one and one-half per cent. per month on the $30,000 on hand June 1st for one month, and on the $1,000 advanced June 9 for two-thirds of a month, and on the $1,000 advanced June 16th for one-half of a month. On July 2nd, 1880, Mr. Edmonds advanced $1,000, making the total to date $33,000. On August 2nd, 1880, Squier & Co. paid Mr. Edmonds 495, which is interest at one and one-half per cent. per month on $33,000, the amount advanced to that date. On August 31st, 1880, Squier & Co. paid Mr. Edmonds $495, which is the interest at one and one-half per cent. per month on $33,000, and on the same day, August 31st, 1880, Mr. Edmonds advanced $1,000, making a total of 34,000 advanced to August 31st, 1880. On October 1st Squier & Co. paid Mr. Edmonds $510, which is equal to one and one-half per cent. per month on $34,000. On October 25th, 1880, Mr. Edmonds advanced $1,000 and on November 5th Squier & Co. paid him $510, which is one and a half per cent. per month on $34,000. On November 8 Mr. Edmonds advanced $500 and on November 15th $500; total advanced to date, $36,000. December 2nd, 1880, Squier & Co. paid Edmonds
188 $536.25, being at the same rate of interest as above stated, and on December 1st Mr. Edmonds advanced $1,000, making total advanced to date $37,000. On December 30th Squier and Co. paid Mr. Edmonds $555, which would be the interest on $37,000 at one and a half per cent. per month for one month. On January 31st, 1881, Squier & Co. paid $555 and on March 1st $555, being at the same rate of one and one-half per cent. per month on the amount of the advances to that date. On March 1st, 1881, Mr. Edmonds advanced 3,000, making a total of $40,000. From this date to September 30, 1881, the amount paid Mr. Edmonds each month was $600, which was equal to one and one-half per cent. per month on $40,000. On October 4th, 1881, Mr. Edmonds advanced $1,000 and on October 30 he was paid $610, which is equal to interest at one and one-half per cent. per month on $40,000 and one per cent. per month on $1,000. On December 1st, 1881, Squier & Co. paid Mr. Edmonds $610, which is equal to one and a half per cent. per month on $40,000 for one month and to one per cent. per month on $1,000 for one month. On December 3rd, 1881, Mr. Edmonds advanced
188½ $1,000, making a total of $42,000, and on December 31st, 1881, Squier & Co. paid Mr. Edmonds $520, which is equal to one and a quarter per cent. on $40,000 and one per cent. a month on $2,000. On January 31, 1882, Squier & Co. paid Mr. Edmonds $520, which is equal to one and one-quarter per

cent. per month on $40,000 and one per cent. per month on $2,000. On February 28, 1882, Squier & Co. paid Mr. Edmonds $520, which is equal to interest at the above rate for one month. On March 3rd, 1882, Mr. Edmonds advanced $2,000, making a total of advances to date $44,000. On March 31st, 1882, Squier & Co. paid Mr. Edmonds $540, which is equal to interest on $40,000 at one and one-quarter per cent. per month for one month and one per cent. per month on $4,000 for one month. From this date, March 31st, 1882, to May 31st, 1884, the amount per month paid to Mr. Edmonds by Squier & Co. was $540, which was equal to interest at one and one-quarter per cent. per month on $40,000 and one per cent. per month on $4,000.

189 (Mr. Wilson objects to the foregoing statements as being nothing more than the calculations, theories, and speculations of the witness and as being immaterial and unimportant in this case.)

Q. Will you look at the checks handed to you now and tell us whose checks they are?

A. Those are checks drawn by Squier & Co., and they are drawn payable to James B. Edmonds, and some of them to James B. Edmonds or order. There are also among these checks two drafts drawn on New York by Squier & Co. to the order of Gillman, Son & Co., New York city.

(Said checks and drafts are offered in evidence by counsel for the complainant. It is agreed that copies may be inserted in the record in lieu of the originals.)

Said checks and drafts are hereto attached and marked Exhibits W. H. S. No. 6.

190 EXHIBIT W. H. S. No. 6.

No. 3. WASHINGTON, D. C., *Dec.* 30, 1880.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & fifty-five $\frac{00}{100}$ dollars.

$555.00. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Signature correct. J. H. Squier & Co.

No. 14. WASHINGTON, D. C., *January* 31, 1881.

National Metropolitan Bank

Pay to J. B. Edmonds or — five hundred & fifty-five $\frac{00}{100}$ dollars.

$555.00. J. H. SQUIER & CO.

No. 26. WASHINGTON, D. C., *April* 1, 1881.

National Metropolitan Bank

Pay to J. B. Edmonds or bearer six hundred $\frac{1}{100}$ dollars.
$600.00. J. H. SQUIER & CO.

No. 33. WASHINGTON, D. C., *May* 2, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or bearer six hundred $\frac{1}{100}$ dollars.
$600.00. J. H. SQUIER & CO.

191 No. 38. WASHINGTON, D. C., *June* 2, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or bearer six hundred $\frac{1}{100}$ dollars.
$600.00 J. H. SQUIER & CO.

No. 43. WASHINGTON, D. C., *July* 2, 1881.

National Metropolitan Bank

Pay to J. B. Edmonds or bearer six hundred $\frac{1}{100}$ dollars.
$600. J. H. SQUIER & CO.

No. 47. WASHINGTON, D. C., *Aug.* 1, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or bearer six hundred $\frac{1}{100}$ dollars.
$600. J. H. SQUIER & CO.

J. H. Squier & Co., bankers.

$600. WASHINGTON, D. C., *Aug.* 31, 1881.

Pay to the order of Mess. Gilman, Son & Co., N. Y., six hundred $\frac{1}{100}$ dollars.
No. 11999. J. H. SQUIER & CO.

The United States National Bank, New York.

[Endorsed:] For deposit in the Union National Bank to credit of Gilman, Son & Co., per S. M. D.

192 No. 55. WASHINGTON, D. C., *Sept.* 30, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or order six hundred $\frac{1}{100}$ dollars.
$600. J. H. SQUIER & CO.

[Endorsed:] Jas. B. Edmonds.

No. 60. WASHINGTON, D. C., *Oct.* 31, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or bearer six hundred & ten $\frac{00}{100}$ dollars.
$610. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 66. WASHINGTON, D. C., *Dec.* 1, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or order six hundred & ten $\frac{00}{100}$ dollars.
$610.00. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 74. WASHINGTON, D. C., *Dec.* 31, 1881.

National Metropolitan Bank

Pay to James B. Edmonds or order four hundred & ninety-six $\frac{00}{100}$ dollars.
$496. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

193 No. 79. WASHINGTON, D. C., *Jan.* 31, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & twenty $\frac{000}{000}$ dollars.
$520. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 84. WASHINGTON, D. C., *Feb'y* 24, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & twenty $\frac{00}{100}$ dollars.
$520. J. H. SQUIER & CO.

[Endorsed:] Jas. B. Edmonds.

No. 92. WASHINGTON, D. C., *March* 31, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 103. WASHINGTON, D. C., *April* 29, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] Jas. B. Edmonds.

194 No. 112. WASHINGTON, D. C., *May* 31*st*, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 117. WASHINGTON, D. C., *June* 30, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

No. 132. WASHINGTON, D. C., *Aug.* 31, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] Jas. B. Edmonds.

J. H. Squier & Co., bankers.

$540. WASHINGTON, D. C., *Sept.* 30, 1882.

Pay to the order of Gilman, Son & Co., N. Y. city, five hundred & forty $\frac{00}{100}$ dollars.
No. 11998. J. H. SQUIER & CO.

The United States National Bank, New York.

[Endorsed:] For deposit in the Union National Bank. To credit of Gilman, Son & Co. Gilman, Son & Co., per Brown. Five hundred & forty dollars.

195 No. 141. WASHINGTON, D. C., *Nov.* 1*st*, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 148. WASHINGTON, D. C., *Nov.* 30, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] Please pay bearer, Mrs. Edmonds. Jas. B. Edmonds.

No. 154. WASHINGTON, D. C., *Jan'y* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order four hundred & forty $\frac{00}{100}$ dollars.
$440. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 164. WASHINGTON, D. C., *Feb'y* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred $\frac{00}{100}$ dollars.
$500. J. H. SQUIER & CO.

[Endorsed:] Jas. B. Edmonds.

196 No. 171. WASHINGTON, D. C., *March* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred $\frac{00}{100}$ dollars.
$500. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 175. WASHINGTON, D. C., *March* 31, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 180. WASHINGTON, D. C., *May* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

No. 186. WASHINGTON, D. C., *June* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred $\frac{00}{100}$ dollars.
$500. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Five hundred dollars.

197 No. 191. WASHINGTON, D. C., *July* 2, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] Please pay the bearer, Mrs. Edmonds. J. B. Edmonds. Five hundred & forty dollars.

No. 124. WASHINGTON, D. C., *July* 31, 1882.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred $\frac{00}{100}$ dollars.
$500. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Five hundred dollars.

No. 201. WASHINGTON, D. C., *Aug.* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

No. 205. WASHINGTON, D. C., *Aug.* 28, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

198 No. 217. WASHINGTON, D. C., *Oct.* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds.

No. 225. WASHINGTON, D. C., *Nov.* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] Exchanged. J. B. Edmonds. John F. Cook, co. D. C. Five hundred & forty dollars.

No. 234. WASHINGTON, D. C., *Dec.* 1, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Endorsed:] J. B. Edmonds. Riggs. Five hundred & forty dollars.

No. 241. WASHINGTON, D. C., *Dec.* 31, 1883.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Written across the face:] Nat. Metropolitan Bank, Washington, D. C. Paid Jan. 2, 188–.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

199 No. 249. WASHINGTON, D. C., *Jan.* 31, 1884.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Written across the face:] Nat. Metropolitan Bank, Washington, D. C. Paid Feb. 1, 1884.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

No. 257. WASHINGTON, D. C., *Feb.* 29, 1884.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Written across the face:] Nat. Metropolitan Bank, Washington, D. C. Paid March 3, 1884.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

No. 266. WASHINGTON, D. C., *March* 31, 1884.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Written across the face:] Nat. Metropolitan Bank, Washington, D. C. Paid April 1, 1884.

[Endorsed:] J. B. Edmonds.

No. 275. WASHINGTON, D. C., *May* 1, 1884.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Written across the face:] Nat. Metropolitan Bank, Washington, D. C. Paid May 2, 1884.

[Endorsed:] J. B. Edmonds. Riggs Co.

No. —. WASHINGTON, D. C., *May* 31, 1884.

National Metropolitan Bank

Pay to James B. Edmonds or order five hundred & forty $\frac{00}{100}$ dollars.
$540. J. H. SQUIER & CO.

[Written across the face:] Nat. Metropolitan Bank, Washington, D. C. Paid June 2, 1884.

[Endorsed:] J. B. Edmonds. Five hundred & forty dollars.

200

201 Q. What was the amount of capital used in the business, so far as you know, in April, 1879?

(Question objected to by Mr. Wilson as incompetent and immaterial.)

A. I have made a calculation from the books of Squier & Co., and they show that in April, 1879, there was invested only $3,496.97 at that date.

Q. Is that the amount of assets at that date, so far as you know?

A. Yes, sir.

Q. What was the amount of capital and assets in August, 1883?

A. As near as I could ascertain from the books of Squier & Co. there was on hand and invested $21,872.83.

(Question and answer are objected to by Mr. Wilson as being immaterial, irrelevant, and incompetent and as not calling for facts, but for the witness's opinions, estimates, calculations, and theories.)

Q. Did that amount of capital embrace the vouchers which were in the hands of Mr. Edmonds?

A. Yes, sir.

202 Q. What amount of vouchers of this class had been purchased or appear to have been purchased within the six months prior to August, 1883?

(Question objected to by Mr. Wilson for the reasons above given.)

A. About $14,000; then there was the cash on hand and some vouchers purchased prior to six months before August 31, 1883, making the total of the amount invested and the amount on hand up to August 1st, 1883, equal to $21,872.83.

Q. Does that embrace all the assets of the business, so far as you know?

A. So far as shown by the books and so far as I know.

Q. What was the amount of assets on hand at the time Squier made his assignment, including those that were in the safe of Mr. Edmonds?

A. I have not the figures to give, but my impression is that the amount of assets on hand, exclusive of those that were in the safe of Mr. Edmonds—live assets—was about seven thousand dollars, and my recollection is that the amount in his safe was about twenty-eight thousand dollars.

203 (Question and answer objected to as being immaterial, as calling for facts that are not in the knowledge of the witness and about which he can only state his impression.)

Q. You were in the employ of Mr. Squier at that time as clerk?

A. Yes, sir.

Q. Were you familiar with his business?

A. Yes, sir.

Q. What other business did he do while you were there except dealing in vouchers of this class?

A. Scarcely anything. He bought pay vouchers of the officers of the army, and he sometimes took allotments of the pay of officers of the navy. He bought some paper, pay vouchers, of civil clerks, and a few notes.

(Question and answer objected to by Mr. Wilson as incompetent and irrelevant.)

Q. What was done with the money which came into the hands of Mr. Squier by way of deposit, or which he borrowed?

(Objected to as immaterial and incompetent.)

A. It was used in the purchase of vouchers of the kind that I have described and in the payment of checks that were drawn on the place by depositors.

204 Q. How was the money used which was deposited or received, and what part of it, if any, was invested in the vouchers received by Mr. Edmonds?

(Objected to as immaterial and irrelevant.)

A. All money that came into the bank were placed in one drawer, and from it the purchases of vouchers, notes, etc., were made. The money all went for the purchase of vouchers and paper, the payment of checks, the expenses, and so on.

Q. Was there any means of distinguishing the money advanced by Mr. Edmonds and the moneys advanced by other parties to be invested in vouchers?

A. No, sir.

Q. Then I understand you that the moneys which were paid in there from time to time were all or nearly all invested in vouchers which Mr. Edmonds has received. Is that correct?

(Objected to as leading, as asking of the witness if he has not stated what he has not really testified to, and as immaterial and irrelevant.)

A. The money was used to purchase vouchers, and Mr. Edmonds, at the time of the assignment, had the majority of the vouchers.

205 Q. When did you first see this paper which is dated September 1, 1880, and which has been produced here?

A. A short time after the assignment.

Q. Was it torn when you first saw it?

A. No, sir.

Q. Do you know how it came to be torn up?

A. Yes, sir.

Q. You may state the circumstances.

A. The first time that Mr. Squier came to the bank after the assignment he said that there were a few papers of a private nature in the safe that he wanted to take away. He said that he wanted that I should take them out and look them over, and if they did not have any bearing upon the business I was to give them to him. I took them out of the safe. One of the papers in the package was an autograph letter from Garfield; another, I think, was a letter of congratulation, written to him by some one at the time of his marriage, and a few other papers of a strictly private character. In the bundle was this paper which has been produced here and which is this torn agreement. I told Mr. Squier that I thought I ought

206 to have that, for I did not distinctly understand the relation between him and Mr. Edmonds, and that I would like to have that left. He said that that was an old agreement; that they were now working under a new one; that I did not want it, and that he guessed he would tear it up. I explained to him that I would like to have it left, and desired that he should not tear it up; but he persisted in tearing it up, and threw it away. After he was gone I gathered up the pieces and put them in a safe place. After failing to see the agreement then in existence between Mr. Edmonds and Mr. Squier I pasted these pieces together as they now appear. This is the history of the transaction.

Mr. WILLOUGHBY: The books of Squier & Company are offered for the inspection of counsel for the defendant and will be produced at any time when desired by them.

207 Cross-examination by Mr. WILSON:

Q. Are you in the employ of the receiver in this case; and, if so, in what capacity?

A. I am in his employ as clerk.

Q. How long have you been in his employ?

A. Since July last.

Q. When did you first have any connection with the firm of Squier & Co.?

A. At the date stated in my direct examination that I became employed by them.

Q. What date was that?
A. August 7, 1877.
Q. What were your duties, and how were you compensated?
A. My duties consisted of keeping the books and doing any little business that a clerk would be apt to transact at the counter.
Q. Who else was in Mr. Squier's employ at that time?
A. No one else in the bank. There was a young man who left at the time I came.
Q. You and Mr. Squier transacted the entire business yourself from that time for how long?
A. From that time until I left the first time.
Q. When was that?
208 A. That was in April, 1879.
Q. I understood you to say that you went into his employ on the 2nd of April, 1879. Is that correct?
A. I can tell very closely by looking at the books, but I cannot tell from memory. I was in his employ April 2nd, 1879.
Q. Who else was in his employ at that date?
A. No one else was in the bank, unless you include the watchman.
Q. When did you leave?
A. April 14th or 15th, 1879.
Q. When did you again return to his employ?
A. In the early part of April, 1880.
Q. Who had been Mr. Squier's clerk in the meantime?
A. E. E. Hersey.
Q. What was the occasion of your return to Mr. Squier's employ?
A. Mr. Hersey left him, and, being out of employment, I returned.
Q. What was the occasion of Mr. Hersey's leaving?
A. I guess that he thought he could do better.
Q. Was that the reason?
A. I don't know that that was what he thought.
Q. Do you know of any other reason for his going?
A. No; I don't know of any reason for his going, but I know of a very good reason for his staying after he got away.
209 Q. What was that?
A. He took some money with him that did not belong to him.
Q. Belonging to Mr. Squier?
A. Yes, sir.
Q. How much?
A. Between nine hundred and a thousand dollars.
Q. How much did he take; do you know?
A. I cannot tell how much, but he is charged with having taken that amount.
Q. Is it charged up to him in the books?
A. It is charged as $940.49.
Q. Do I understand you to say that from the time you returned,

in April, 1880, to the time of the assignment you remained in Mr. Squier's employ?

A. Yes, sir.

Q. As clerk and book-keeper?

A. Yes, sir; as clerk and book-keeper.

Q. Was Mr. Squier in daily attendance at the bank?

A. Yes, sir; with the exception of vacations that he might take in the summer or some little business that might call him to New York.

Q. Did he manage the business himself?

A. Yes, sir; he managed it.

Q. How were you compensated for your services?

210 A. With money.

Q. Do you mean by that a salary?

A. A salary and some little perquisites.

Q. What were the perquisites?

A. Some grocery men owed him bills that he found it hard to collect and he gave me some orders on them, and if I succeeded in getting the groceries they were mine.

Q. Did you advance him any money?

A. Yes, sir.

Q. In what way was the business conducted between you and him?

A. I loaned him the money.

Q. How much?

A. It started with five or six hundred dollars, and it is credited to me on the ledger.

Q. How much did it amount to?

A. I should say a little upwards of $2,000.

Q. How much was it when he failed?

A. It was $1,500, or about that.

Q. Under what agreement or understanding was the money loaned by you, and what return did you get therefor?

A. The money was loaned to him and I was to give a notice of thirty days before withdrawal. I was to receive one per cent.

211 per month for that money, and that was an additional incentive to my employment; that was that he would allow me one per cent. a month for any money I brought in.

Q. That was in addition to your salary?

A. That was the understanding when I first went there. The agreement about the money was made before I was employed or at the time I was employed.

Q. Did you have any written agreement with him?

A. No, sir.

Q. Only a verbal one?

A. Yes, sir.

Q. How were the moneys that you advanced entered upon the books of the concern?

A. As deposits.

Q. As cash?

A. Well, the entry would read J. B. Smith deposited so many dollars.

Q. Was there any ledger account kept with you?

A. Yes, sir.

Q. What account was kept of the moneys paid to you in respect of the loan?

A. I drew a check and it was charged to my account.

Q. Will you please refer to your account and prepare a copy of it showing the moneys paid by you and received by you?

212 A. Yes, sir.

Q. You have undertaken to say what the capital stock of Squier & Co. was in April, 1879; did you know at that time what it was?

A. No, sir.

Q. Did you have any means of knowing?

A. I could have made an estimate from the books, but I did not do it.

Q. How did you make the estimate that you have spoken of here?

A. By reference to the book to see what paper was purchased that would fall due after April, 1879. All paper that was purchased that would fall due on or after that date I considered as an asset on that date, and to that I added all moneys in the bank, all moneys in New York, and all moneys in the bank where he kept his deposit in this city, and the result I gave.

Q. Then you mean to say that the difference between the assets and the liabilities, so far as you can ascertain from the books, was the amount you have stated?

A. No; I don't mean to say that. I have not stated what the liabilities were on that date.

213 Q. You mean to say that there was only $3,436.97 which constituted the capital of that bank in April, 1879?

A. That is all I could make up from the books.

Q. I would like to understand how you make that up.

A. By looking back and seeing what paper was purchased that would fall due on or after April 1, 1879, and any paper that was purchased prior to that or fell due after that date and not paid before I considered as so much money invested in that paper or that it must be on hand at that date; to that I added the cash in the drawer on that date, the cash in New York, and the cash in the bank where he deposited in this city.

Q. As you now find them in the books?

A. Yes, sir; as I now find them in the books.

Q. You have not made any effort to ascertain the difference between the assets and the liabilities at the time spoken of, have you?

A. I have not.

Q. State specifically and definitely what books were kept by the firm of Squier & Co.

A. A day book or cash book and a ledger.

Q. Were all the accounts regularly posted in the ledger from the day book?

A. Yes, sir.

214 Q. By yourself?

A. By myself the most of the time I was there.

Q. By what consideration were you governed in determining whether the entries in the day book could be transferred to the ledger?

A. If there was an account opened on the ledger and there was an entry on the day book I posted to that account. If there was no account open and it seemed to be in the form of a deposit I would open an account or ask if I should open one.

Q. Can you indicate in the cash book, running through from May 1, 1876, to April 22, 1879, what classes of entries were transferred from the cash book to the ledger?

A. Yes, sir; in that portion of it made after I was employed.

Q. Examine the entries of April 2, 3, & 4 with reference to my question.

A. On April 2 Henry S. Banks deposited $3, which was posted to ledger account; Thomas Miller deposited $15, which was posted to ledger account. All deposits were transferred.

Q. Read the entries in the cash book and state what were not transferred to the ledger and why they were not.

215 A. W. B. Stokes, March voucher, $40.85. That was paid in on April 2. It was not transferred to the ledger because there was no ledger account; that was paying for a voucher that was bought prior to that time. G. G. Cornish, note, two months, $300. There was a note given for that which was not transferred to any ledger account nor entered anywhere else on the books.

Q. Why was it not entered anywhere else; it was not cash, was it?

A. It appears to be cash.

Q. Was it cash?

A. From the entry on the other side of the cash book I should say that part of it was cash and part of it was in the surrender of another note for $200. Another entry is Col. Gitt, for W. B. Geuella, to D. King, to July 1st, $60. That was not posted to the ledger.

Q. Why not?

A. It seems to have been paid in by one man to pay the voucher of another man to July 1st.

Q. No entry was made anywhere else on any of the books?

A. No, sir.

Q. What is the next entry?

216 A. Thomas Miller deposited $15. That was posted to the ledger.

Q. Is there any mark to show that it was posted?

A. Yes, sir.

Q. What is the mark?

A. A check mark or post mark.

Q. James B. Edmonds on agreement, $2,000. Was that posted?

A. No, sir.

Q. No entry of it made anywhere else?

A. No, sir.

Q. Refer to the entries made on April 4, and state what they were.

A. On April 4th, Charles W. Hoyme, March voucher, $70. That was not posted because it was in payment of a voucher due about that time. The voucher was surrendered to him. J. I. McCarty, per letter, $146.06. That was not posted because there was no ledger account with McCarty.

Q. Why?

A. I don't know why there was none. George Worden deposited on draft $10. That was posted to the ledger account because it was a deposit. It says on draft. I presume that the draft was for a larger amount than $10, and the balance was probably paid him.

217 Q. Do you know Justus I. McCarty?

A. Yes, sir.

Q. Do you know as to any of his transactions with the firm of Squier & Co.?

A. Partially.

Q. What were they?

A. He loaned some money to Squier, I think.

Q. Was not that sum that you have just mentioned a loan?

A. For all that I know it may have been.

Q. Is it not your opinion that it was?

A. I do not know that it was not.

Q. Don't you know that he from time to time loaned Squier considerable sums of money?

A. I am not aware that he loaned him very large sums.

Q. Was any ledger account kept with him?

A. There was none to which that entry was posted; I think there is a ledger account with J. I. McCarty.

Q. Between this and the next session will you examine and see about that?

A. Yes, sir.

Q. What is the next entry?

A. S. K. Schwenck; draft on Philadelphia, $424.76.

Q. What was the nature of that entry?

218 A. That was a deposit, and it was posted in the ledger.

Q Can you state, from the examples you have given, any rule by which you were guided in determining whether to post or not to post the entries in the cash book to the ledger?

A. In all cases of deposits they were posted; in cases of payment of notes or vouchers due at that time they were not posted. No account was opened with a man when we bought a piece of paper from him.

Q. The case of McCarty was not the payment of a voucher, was it?

A. No, sir; it appears not. It says "per letter, $146.07."

Q. The moneys that were received by Squier & Co. for investment were not posted, as contradistinguished from those that were made on deposit?

A. I do not make that distinction.

Q. I know that you don't, but don't the books make that distinction?

A. No; I don't think the books would carry out that distinction.

Q. State if you have produced here all the checks given by
219 Squier & Co. to Mr. Edmonds and all the agreements, memoranda, and papers of every description which have come into the possession of the receiver and of which you have any knowledge.

A. I have produced all the checks, drafts, and agreements that came into my possession as assignee of Squier & Co.

Q. Have you produced all the checks, agreements, memoranda, and writings of any kind relating to the business of Mr. Edmonds with Squier & Co. of which you have any knowledge?

A. Yes; unless there may be some letters or something of that kind that are lying around, I think I have produced everything that is material.

Q. Do you know anything of the notes that were given by Mr. Squier and subsequently surrendered to him by Mr. Edmonds?

A. I do not.

Q. Please make an examination and see if there are any such in the possession of the receiver; and, if so, produce them.

A. I will.

220 WASHINGTON, D. C., *February* 28, 1885.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of the defendant, Mr. Wilson.

Cross-examination continued by Mr. WILSON:

Q. Have you examined to see whether you have any notes of Squier's that were given to Mr. Edmonds or any other papers or agreements relating to that transaction?

A. I have not since last night.

Q. Had you before?

A. Yes, sir.

Q. You have produced here all the checks which in any way relate to the business of Mr. Edmonds with Squier & Co. and all the agreements and drafts of agreements of which you have any knowledge?

A. Yes, sir.

Q. Have you brought the ledger from the time intervening between April 2, 1879, and the time of the failure of Squier & Co.?

A. The ledgers are here.

Q. Have you made a copy of your own account?

221 A. No, sir.

Q. Have you made a copy of the account of Mr. McCarty?

A. No, sir.

Q. Why not?

A. I have not had the time. I have been engaged on something else.

Q. State as definitely as possible what kinds of entries in the cash book were transferred to the ledger.

A. All deposits of money were transferred to the ledger when a deposit account had been opened and pass books issued.

Q. Was any mark made in the cash book indicating what entries were transferred from that to the ledger; and, if so, what?

A. A check mark was made indicating a post to the ledger.

Q. In pencil?

A. No, sir; in ink.

Q. That is made in every case where accounts are transferred to the ledger?

A. Yes, sir.

Q. What entries were made then in the ledger of money that was loaned to Squier & Co. as distinguished from money that was deposited with them for safe-keeping? [On margin in lead pencil:] Mr. Wilson did not say safe-keeping.

222 A. I should consider a loan and a deposit as about the same thing.

Q. Would loans made on Squier's note go to the ledger account?

A. No; as a rule loans made in which Squier gave his note were not posted.

Q. State what rule or direction or practice governed you as the book-keeper of Squier and Co. in determining what entries in the day book should be entered in the ledger.

A. Where the entry was a deposit I transferred it to the ledger without any question, and opened an account with the party in whose name it was deposited as shown by the cash book.

Q. Among the entries in the cash book on April 2, 1879, was G. G. Cornish, $300; where did that go?

A. That did not go on the ledger.

Q. Why not?

A. It seems to have been a note given of two months.

Q. There is an entry on April 5th to B. Harding, $941.67.

A. That appears to be a note at 84 days, and did not go on the ledger.

223 Q. That means that Harding loaned Squier money and took Squier's note for it, does it not?

A. Yes; that is what it means.

Q. Money received by Squier & Co. from Harding for which a note was given?

A. Yes, sir.

Q. That was not posted?

A. No, sir; those entries were not posted.

Q. On April 11, 1879, I find the entry Hattie T. Fisher, note for $3,000. Did that go on the ledger?

A. No, sir.

Q. Why not?

A. There was no account open with Hattie T. Fisher.

Q. What does that entry indicate?

A. It indicates that there was a note given for it.

Q. Does it indicate that $3,000 was received by Squier & Co. from Hattie T. Fisher and a note given therefor?

A. If you will look on the opposite side of the page at the same

date you will find that Squier & Co. paid Hattie T. Fisher a note for $2,600 and interest to date, $109.19. I should say that the entry to which you refer was a note given to Hattie T. Fisher
224 for the two notes paid on the other side and money enough advanced to make the difference.

Q. On the 10th of April there is this entry: R. E. Redway, $700. What does that indicate?

A. The same explanation made with regard to the Fisher entry will cover this.

Q. What does this entry, taken by itself, mean?

A. That a loan of $700 was advanced that day by R. E. Redway to Squier & Co.

Q. It did not go on the ledger?

A. It did not go on the ledger.

Q. Under dates of April 26, 28, and 29 there appears to be entries of cash received amounting to over $3,000, embraced in some twenty-seven items, of which only two items appear to bear check marks, showing that they were entered upon the ledger. Will you explain upon what principle that account was made?

A. It does not show that any such amount as you have mentioned was received as you have stated. Under date of April 26 all amounts received, with one exception, were for paper due on or about that time. The one exception is $61.10, which was paid
225 for a call draft. The same explanation will cover April 28 and 29, the majority of the sums being for paper maturing on or about that date.

Q. They were not entered upon the ledger?

A. No; they were not entered upon the ledger for that reason.

Q. Have you examined the checks that are described in the exhibit attached to Mr. Edmonds' answer and which have been produced here in evidence in favor of J. H. Squier & Co.?

A. I just examined them casually.

Q. Do you know the signature or the endorsement and signature of J. H. Squier on the back? And state whether in your opinion they are all genuine.

A. I have not seen any signature of J. H. Squier that I do not consider to be genuine.

Q. You looked at all these?

A. Yes, sir.

Q. They are, in your opinion, all genuine?

A. Yes, sir.

Q. What was the practice of Mr. Squier concerning the deposits of money that he received on checks; where did he keep it?

A. He kept the money in his bank—in the bank in New York—and he also kept a deposit in the city banks.

226 Q. In what banks?

A. In the Continental National Bank of New York, in the United States National Bank of New York, the Citizens' National Bank of Washington, and in the National Metropolitan Bank of Washington. These accounts were not all running at the same time.

Q. In the account that you have made up there appears to have been on the 17th of September, 1879, a check given by Mr. Edmonds in favor of J. H. Squier & Co. for $1,000, which is indicated by red ink. I understand you to say that the books of Squier & Co. do not show that entry?

A. The books of Squier & Co. do not show that entry.

Q. Did you have any knowledge as to whether Mr. Edmonds had given such a check before he stated it?

A. No, sir.

Q. And so in regard to the other checks that are marked here on the schedule in red ink; you had no knowledge of them until they were exhibited, did you?

A. No, sir; not directly.

Q. Did you know it indirectly; and, if so, how?

A. In the check entered in red ink as $2,000 under date of October 10, 1879, and under dates of March 6, 16, and 27, of
227 1880, I find a credit in New York which I was unable to trace to any source other than as having been given by Mr. Edmonds, and in making up this account, assuming these dates to be correct, I made the amount paid him equal to the amount that I knew him to have received upon moneys advanced.

Q. When did you first find out that there was such a credit in New York, and from what?

A. From the statement of the bank in New York.

Q. When was that?

A. After the assignment.

Q. How soon?

A. I cannot state that. It was whenever I tried to find out the amount of money advanced by Mr. Edmonds.

Q. It was in 1884?

A. Yes, sir; it was in 1884.

Q. That was the first knowledge and the first suspicion that you ever had of any such sum having been paid by Mr. Edmonds to Squier & Co., was it?

A. No; I knew that about that sum was supposed to have been advanced.

Q. How did you know?

A. From the amount that he received each month.

228 Q. Was there any facts within your own personal knowledge or anything on the books of Squier & Co. that gave you any information concerning these advances made by Mr. Edmonds to Squier & Co. and described here in red ink? Confine your answer to your own personal knowledge derived from the business of Squier & Co. and from the books in the office at Washington.

A. No; I do not know of my personal knowledge.

Q. It was through no fault or negligence of yours as book-keeper that these sums in red ink were not properly entered on the books of Squier & Co. at the time these loans were made?

A. I was not with Mr. Squier at the time that these amounts indicated in red ink were advanced.

Q. Any of them?
A. No, sir.
Q. Was there any balance-sheet made out at the close of that year?
A. No, sir.
Q. None whatever?
A. No, sir.
Q. Were the books ever balanced?
A. There never was a balance-sheet made.
Q. Were the books ever balanced?
A. The accounts were balanced.
229 Q. How often?
A. At different times; some accounts at one time and some at another.
Q. Was there any account in the ledger with capital stock?
A. No, sir.
Q. With capital?
A. No, sir.
Q. Any account with vouchers except with individuals?
A. There was not.
Q. Do you know and can you state what the capital used in the business of Squier & Co. was at any time while you were in their employ except as you are able to estimate it by an examination of the books?
A. I can tell only from the books.
Q. When did you first make the attempt to ascertain what the capital was in 1879?
A. Some time within ten days.
Q. Have you made an examination to ascertain what on any particular day was the difference between the assets and the liabilities of Squier & Co.?
A. I have not.
Q. What examination have you made to ascertain what you suppose the capital stock to have been on any particular dates except the two dates that you have mentioned?
230 A. I have not endeavored to ascertain it on any other date.
Q. Did you ever make any examination of the books to ascertain how much he owed at any one time?
A. I made a very close calculation after June 7, 1884.
Q. You found out how much he owed at that time?
A. I came pretty near it; I found it to be at that time between $108,000 and $109,000, as shown by the books and in outstanding notes and paper.
Q. As to how long that amount had been due you have no idea?
A. Not as to the whole of it, but as to some of it I had a very definite idea.
Q. You have no idea how much he owed on April 2, 1879?
A. I have not, but I can ascertain for you.
Q. You can only ascertain from what the books show, I suppose?
A. Yes, sir.

Q. What were the nominal assets on the date you have named when you found out what the liabilities were?

A. I cannot give you the amount now from memory, but if you will defer it until the next examination I will do so.

Q. Did you ascertain it at that time?

231 A. Yes, sir.

Q. Give it to us as near as possible.

A. My impression is that, exclusive of what was in the possession of Mr. Edmonds or what was in his safe, there was between five and seven thousand dollars.

Q. Of all kinds?

A. Yes, sir; of all kinds.

Q. Good, bad, and indifferent?

A. Well, no; I should call those live vouchers; I called them something that was liable to be collected.

Q. How much of the other kind?

A. I think there was some fifty or sixty thousand dollars' worth of paper that there is no possibility of collecting.

Q. Did you make up a statement of the assets and liabilities at that time?

A. Yes, sir.

Q. Where is it?

A. I cannot say exactly.

Q. All the knowledge you have concerning payments made by Mr. Edmonds to Squier & Co. you derived from the books of Squier & Co.?

A. Yes, sir; and from the checks that he has produced here.

232 Q. And so with regard to the moneys paid by Squier to Mr. Edmonds?

A. No; I know of Mr. Edmonds receiving some of the sums he received from Squier of my own personal knowledge.

Q. How were they received?

A. By check.

Q. When and how?

A. I mean to say that I knew of the checks being drawn for delivery.

Q. You know that checks were drawn for delivery, but you did not see them delivered?

A. No, sir; I never saw a check delivered to Mr. Edmonds.

Q. There have been offered in evidence some notes written by Squier & Co. to Mr. Edmonds on the heading of which appears as follows: Banking-house of J. H. Squier & Co., No. 1416 Pennsylvania avenue, Washington, D. C., and on the left hand of the page, at the top, is printed the following card: "Gold, government, railroad, and corporation bonds bought and sold at market rates; 6 per cent. interest paid on deposit, payable on demand. Special rates on time deposits. Interest paid or credited January and July.

233 Pay of officers in the army cashed in advance. Navy allotments purchased. Drafts on New York given and taken at par. Letters of credit to travellers in Europe issued. Collections made everywhere." Will you state if that sort of an announce-

ment was not contained on all the note paper and writing paper of Squier & Co. and on his business cards?

A. A similar one, but I wouldn't say that it was like that one.

Q. This continued during the time that you were there in his employ?

A. Yes, sir.

Q. There were similar announcements made from April, 1879, to the time of his failure?

A. Yes, sir; but I think some of them were changed somewhat.

Q. You have stated that Hersey was employed by the bank when you were discharged. Had he ever been employed before that?

A. I do not know.

Q. What is your recollection about it?

A. I do not know whether he was or not.

234 Q. Examine the books and state whether prior to the date of your going into the employ of Mr. Squier there are entries in the handwriting of Hersey.

A. Between May, 1876, and March, 1877, the writing in the cash book looks very much like Hersey's writing.

Q. Would you take it to be his handwriting?

A. I should think it was his, from a comparison with the other entries in the book which I know to be his handwriting.

Redirect examination by Mr. WILLOUGHBY:

Q. Do you know how long Mr. Squier had been in business?

A. No, sir; I do not.

Q. How long had he been in this business?

A. These books go back to 1868. I think he was in business a little while before that, but I don't know.

Q. You speak of a large amount of assets on hand at the time of his failure which you do not call live assets. Did these extend back a good many years?

A. Yes, sir; a good many of them back to 1868.

Q. And from 1868 down?

A. Yes, sir; from 1868 down to 1884.

235 Q. Can you state in a general way at what period the indebtedness which existed at the time the assignment arose?

(Question objected to by Mr. Wilson as incompetent.)

A. The greater portion of the indebtedness arose between 1879 and 1884.

Q. What proportion of it would you estimate in a general way as having arisen subsequent to September 1st, 1880, and prior to August, 1883?

A. I cannot state that with any definiteness. With time to look it up, I could make a very correct statement.

Q. Would you say a considerable portion of it?

A. I would say now one-third of it, possibly one-half, perhaps more.

Q. What was the occasion of your leaving when Mr. Hersey came there in 1879?

(Question objected to as immaterial and irrelevant.)

A. Mr. Squier told me about the time that I left, probably a week or two weeks before that time, that he would not want my services any longer, as there was a gentleman going to put a large sum of money in there who had a friend that he wanted to come in
236 to occupy the place that I occupied, so as to look after his interests. So, not having any voice in the matter, I had to leave.

(Answer objected to as incompetent.)

Q. Who was the gentleman to whom he referred?

(Question objected to as incompetent.)

A. He said that it was the man who made the $2,000 deposit a short time ago, a day or two ago.

Q. Do you know anything of the relation between Mr. Edmonds and Mr. E. E. Hersey?

A. I don't know much, except what young Hersey told me.

Q. Do you know where Mr. Hersey is now?

A. I do not.

The request made by Mr. Wilson for copy of the accounts of J. I. McCarty & Jay B. Smith is withdrawn by Mr. Wilson.

WM. H. SMITH,
Examiner-in-Chief.

237 WASHINGTON, D. C., *March 11th*, 1885.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of the defendant, Mr. Wilson.

Redirect examination by Mr. WILLOUGHBY:

Q. While you were in the employ of Squier were you the only clerk?

A. Yes, sir; I was the only clerk.

Q. As such did you have a general knowledge of his business aside from the books?

A. Yes, sir.

Q. How was his business conducted generally from month to month?

(Question objected to as immaterial & irrelevant.)

A. The most of the business was done between the 20th of one month and the 5th of the following month—the great bulk of it, probably nine-tenths. We commenced taking new vouchers about the 20th, and at one time we used to collect the vouchers due for the current month about the 25th, and from that on to the end of

the month; but later we could not collect any vouchers until the end of the month when they were due.

238 Q. What was the nature of the business during the period from the 5th to the 20th of the month?

A. It was the same as the other portions of the month, but there was not nearly so great a quantity; we did scarcely anything from the 5th to the 20th.

Q. Did he do any business in Government bonds or bonds of other kinds?

A. No, sir; nothing to speak of. I don't think that he bought Government bonds more than three or four times during the time that I was with him, and then not to exceed one thousand dollars at any one time.

Q. Did he do anything in railroad or corporation bonds?

A. No, sir; he never bought any railroad or corporation bonds or stocks during the whole time that I was with him.

Q. Did he discount notes according to the usual business of banks?

A. No; not what you would call a bank discount of notes. He would occasionally buy a note just the same as he would buy a voucher.

Q. Will you give the facts relating to the vouchers of Gen. Schwenck on hand at the time of the assignment which went into the possession of Mr. Edmonds?

239 (Question objected to as not being proper on re-examination and as being immaterial and irrelevant.)

A. Schwenck was indebted to Squier & Co. in the sum of about ten hundred and fifty dollars, for which he gave in payment a deed to a wharf lot on Ward's Island, New York city. Being unable to clear the title to said wharf lot, he offered Squier an acceptance drawn by Emory E. Childs on the Estroid Company of New York City, and accepted by the treasurer of that company. Squier declined to accept this without security, and in order to secure this acceptance he gave Squier & Co. six pay accounts—I think it was six—sufficient to make the sum of the face of the acceptance, with the understanding that they were not to be collected from the paymaster, but as one of them became due another was to be substituted for it, and the one becoming due was to be surrendered to Schwenck. At the time that the acceptance became due all the accounts were to be surrendered to Schwenck if it was paid.

240 *A.* A short time before the assignment, something like a month, when the acceptance for ten hundred and fifty dollars became due, the parties not wishing to pay it, a partial payment of two hundred dollars was accepted by Squier, and a new acceptance, similar to the first, for about eight hundred and fifty dollars, with a personal due bill of Schwenck for the sum of fifty-six dollars, was taken, the vouchers continuing as collateral for the new acceptance, as they had been for the old. These vouchers were on hand at the time of the assignment and were in Mr. Edmonds' possession.

(Answer objected to as immaterial & irrelevant.)

Recross-examination by Mr. WILSON:

Q. While you were there did you know of Mr. Squier borrowing considerable sums of money from other persons on which he paid interest? And, if so, mention their names and the amount.

A. With a few exceptions, he paid interest on every deposit appearing on the ledger. The exceptions are those deposits which were subject to check at any time without notice of withdrawal being given.

241 Q. Do you know of his borrowing money of other persons whose names are not on the ledger?

A. Yes, sir; there are a few persons.

Q. State who they were and the amounts borrowed.

A. G. G. Cornish is one, and the amount borrowed was about twenty-five hundred dollars; H. C. Henry, about seven hundred and fifty dollars; John B. Harding, varying from one thousand to five thousand dollars; A. G. Wilkenson, varying from one to three thousand dollars; D. C. Patterson, about two thousand dollars. There are some others, but I cannot recall them now.

Q. Do you remember Mrs. Fisher?

A. Yes, sir; I remember Mrs. Fisher.

Q. How much was her loan?

A. Mrs. Fisher's loan varied from two thousand to thirty-five hundred dollars. I cannot now give the exact figures.

Q. Anybody else?

A. Yes, sir; some others.

Q. Do you remember any others?

A. I do not recall them now. There is one, Mrs. Tresize—about three thousand dollars.

Q. Any one in Alexandria that you remember?

242 A. No, sir.

Q. He borrowed from and paid interest to no one in Alexandria, that you recollect?

A. No, sir; no one whose name does not appear on the ledger.

Q. Any one in Alexandria whose name is on the ledger?

A. I don't know of any one whose residence is in Alexandria.

Q. Or near Alexandria?

A. Or near Alexandria. Mr. Grunwell lives in Alexandria county, but his account is on the ledger.

Q. How much was the average amount of his account?

A. I think the largest it ever was was fifteen thousand dollars. It was a little less, possibly two thousand dollars less, at the time of the assignment.

Q. Did not Mrs. Fisher's loan amount to as much as seven or eight thousand dollars sometimes?

A. I think not.

Q. Is her account on the ledger?

A. No, sir.

Q. The loans of Mrs. Fisher and Mrs. Tresize together
243 amount to seven or eight thousand dollars?

A. Yes, sir.

Q. Do you know or have you ever heard of any other book being kept by Mr. Squier or by Squier & Co. in which were the accounts of these persons from whom he borrowed money and to whom he paid interest?

A. No, sir.

Q. You don't know of any other book?

A. No, sir.

Q. Or of any entries or memoranda being kept by him other than those which appear on the day book which has been produced here?

A. I do not know of it.

Q. Have you heard of any such thing?

A. I think it quite probable that he kept a memorandum of his outstanding notes.

Q. ——.

A. No, sir.

Q. What rate of interest was paid to the other persons whose names you have mentioned?

A. It varied from eight to twelve per cent. per annum. I think, in the case of Mrs. Fisher, as long ago as when I first went there, that Squier was paying even more than that—as much as eighteen or twenty per cent. per annum.

244 Q. What do you mean by speaking of the Scwenck vouchers as on hand at the time of the failure of Squier & Co.?

A. I stated in the fore part of my answer that those vouchers were to be exchanged for others when they became due; therefore they were not the same identical vouchers that were originally given.

Q. Where were they on hand?

A. They were in Mr. Edmonds' safe.

Q. That is what you mean when you speak of their being on hand?

A. Yes, sir; I mean that they were Schwenck's paper outstanding at that time.

Q. When were they put into the safe of Mr. Edmonds?

A. I don't know.

Q. By whom were they given to Mr. Edmonds?

A. I don't know that.

Q. Do you know that Mr. Edmonds knew anything of the fact that you have testified to here?

A. I do not.

Q. When was the indebtedness of Schwenck which you speak of first incurred?

A. I think it was incurred at different times until it reached that amount; it was not all incurred at one time.

Q. Where was the due bill or acceptance or whatever it was of Schwenck's at the time of the failure?

245 A. In Squier & Co.'s safe.

Q. And the vouchers were in Mr. Edmonds' safe, as you have stated?

A. They were.

JAY B. SMITH.

WASHINGTON, D. C., *March 10th*, 1885.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of the defendant, Mr. Wilson.

EDWARD M. SCHAEFFER, witness of lawful age, produced by and on behalf of the complainant, is examined by Mr. WILLOUGHBY:

Q. What is your name, residence, and occupation?

A. Edward M. Schaeffer; residence, 1321 F street, Washington, D. C.; I am a physician, and make a specialty of microscopic analyses.

Q. How long have you been engaged in the business last mentioned?

A. For twenty years the last of this month. In March, 1865, I entered the microscopical division of the Army Museum
246 under Dr. Woodward, and I have been continually employed since then either there or in private practice.

Q. Will you look at the paper marked Exhibit W. H. S. No. 1, and state whether you have made an examination of it within the last few days?

A. I have, sir.

Q. Will you state in detail what you have discovered in relation to it?

A. I have examined the entire document as to the appearance of the two sides of the first leaf, which is the only part written on with ink, and especially with a view to the character of the ink employed. I find that the body of the document is written in a nearly black ink. It has a greenish tint where any color remains, and, in my opinion, it is a copying ink or a copying fluid. In addition to this, I find that there are numerous additions and alterations, which are, with one or two exceptions, made in a purplish ink, which, in my opinion, contains aniline. From the way the ink is developed on the paper and the amount of drying I consider that the greenish black ink presents the usual appearance of pen-writing after
246½ such a lapse of time as would be indicated by the date affixed. The additions in purplish ink are almost uniformly more distinct and of a fresher appearance. While I say almost uniformly, there are points where a coppery or metallic appearance is developed, making it harder to judge of the age. I am absolutely certain that these additions and corrections are made with a different ink from that used in the body of the document, with one or two exceptions, which I will note. I have prepared a memorandum for convenience, as I cannot retain all these matters in my memory. With one or two exceptions these corrections and additions are all made with this purplish ink and they appear much fresher than if written on the 1st day of August, 1883. I should like to be asked about this paper, for I have examined every word in it, and if there is any particular point or words which are of importance I should like to be asked as to those words.

Q. You may read from your memorandum.

247 A. I have a memorandum on which I have noted these appearances as they occur in the document. The first addition is in the first letter of the first line of this agreement. The "T" is touched with the purplish ink and the upper horizontal dash and the last curve. I will note all of these, both important and unimportant. The next is the cross on the "t" in the word "that," "Witnesseth that;" that is a heavy broad mark in purplish ink. The next is in line two, page 1, "J. H. Squier & Co." The "H" has two purplish strokes: the "S" in Squier another; the "& Co." is written entirely in purplish ink. The next following words in the same line, "Forty-four thousand dollars." The "F" has a loop constructed separately of purple ink. In line 3 the "f" in "for" has a loop in purple ink. The word "by" has the loop similarly added. Line 4 has no additions. Line 5, in the word "months," the top of the "t" and "h" are added in purplish ink. In line 6 no alterations are detected. In line 7 there are none. In line 8 the word "by" has the loop completed in purplish ink. Line 9, no additions.

248 Line 10 has no alterations. Line 11, "per cent.;" the word "cent." has been written over. There is black ink underneath and it is written over in purplish ink. In line 12 there are no additions. In line 13 there are no changes. Line 14, "to pay Squier & Co.;" the word "Squier" is written entirely in black ink; the "& Co." is added in purplish ink, and the "e" in Squier is touched with the same purplish ink; it is filled out. All the "ee's" in the body of the document written in black ink are not looped, I find. In line 14, "for their services" is in black ink, but a perpendicular and horizontal line in the "t," the loop of the "e," and an "r," written at the end, are in purplish ink. Line 15, the word "vouchers;" the "rs" has been written over and strongly developed—that is, the original "rs" in the word is a mere shake—two shakes—and they are raised—that is, made plainer in purple ink. Line 16, "said Squier & Co.;" "& Co." is added in purple ink. The next word is "guarantees." The final syllable is "tees," is in greenish black ink, an "s" has been added in purple ink, and the two loops of

249 the "ee's" enlarged in purple ink. Line 17 has no changes. Line 18, "its prompt payment;" "prompt" is written in black ink, and almost entirely rewritten in purple ink. The "t," however, has not been touched. The pen in the second writing has been very soft, and the ink flowed differently. Line 19, no additions. Line 20, no additions in purple ink, but the word "above," the last but one, has a "v" added in the same ink as the first writing, and it appears to be of the same date as the first. Line 21, "profits;" there is a caret mark and "interest" above; "and interest" and the caret mark both in purplish ink. Before the "and" is an imperfect stroke, which I cannot distinguish as having the form of any letter. "And interest" is written in purple ink and erased. The imperfect letter before the "and" I could not make anything out of. Line 22, no change. Line 23, "said Squier & Co.;" the "& Co." in purple ink. Line 24 has no changes. In line 25 there are no changes, but I note a blot—an accidental blot—over the "the," which shows the appear-

ance of the purplish ink when very thin, and serves to
250 contrast with the place at the bottom of the page where the black ink is blotted. In line 26 there are no changes. In line 27 there are no changes. Line 28, "or for cash." I think the word "the" can be distinguished under "cash;" the "th" has been blotted, whether very hurriedly with blotting paper or by wiping it over while wet with the finger. The next word, "he," is written over "&," and it is followed by the word "may." The "he" is in purple ink, with a capital "h." I have not noted it here, but I remember in this place that the "cash" is followed by a comma in black ink, which is converted into a period by the purple ink; but if that is of importance I will have to look at it again. (Looks at it.) Yes; the period is made with the purplish ink, which has here a coppery hue, but I was not correct in saying that I could detect a comma under it; it is a very large round black mark and would cover a comma such as I find in other parts of the document. Page 2, line 1, no change. Line 2, "therefore" erased in purplish
251 ink. The first two lines read thus: "His safe, therefore, in banking-house of said Squier, therefore, free of charge." The second "therefore" in the second line is erased with purplish ink. Line 3, "said Squier & Co.;" the "& Co." is crowded in and written in purplish ink as elsewhere. The next word, "gives," is in black ink, but the "e" is enlarged, and a mark running out from it covers almost the small "s." We then come to a very elaborate erasure of the words "said Edmonds," which are erased with two horizontal lines and an "x"-shaped line; two lines in the shape of an "x" in each word. The lower horizontal line runs through the two words, and is as well as the two "x" lines in black ink. The upper horizontal lines separated into two words are in purplish ink. The next word is "their," and is written "his" in black ink. The small "t" is added, as in the previous instance; the "e" is enlarged and the "r" added. The "s" of his comes in where the "i" would be, if it were their, and is made to do duty for an "i."

In line 4, towards the end, there is an addition above the line, "and interest at ten per cent.;" this, with the caret mark
252 below, is all in purple ink. Line 6, the last word, "as," in black ink, changed to "is" in purple ink, or rather "is" in purple written over it. Line 7, no change. Line 8, no change. Line 9, "by either party or;" the "r" in "or" is retouched with purple ink. In line 10 the second word is "all;" the "a" is written over in purple ink. Line 11, "ed," in the first word, "returned," written over in purple ink; in "Edmonds" the "o" is retouched in purple ink; underneath "interest" is a partially erased word, in which I can detect a down-stroke, something like a loop of a "p," after the first stroke in "r," an "o" followed by an upward stroke, then the fragment of a letter; the fragment is a downward stroke and two elongated loops; following this are two other letters, "t" and "s," quite distinct, so that this word seems to be "prof—ts," which can be made out in black ink, and then "interest" is written over it in purple ink. Line 12, the second word, "aforesaid;" the two letters "re" are retouched in purple ink.

253 Q. Does the paper present the appearance of an erasure having been made in the word "interest?"

A. Yes, sir; there is an erasure above and below this fragment of a letter looking like the middle of an "f;" the surface of the paper has been destroyed; I have noted that here, but it is very evident to the naked eye. Line 13, no change made. In line 14 there are no changes. Line 15, the second word, "all," was originally "any" in black ink; the two l-loops are constructed on the two points of the "n," and the last "l" is continued with a sweep which covers the top of the "y," but the tail of the "y" can be seen going below. Line 16, the word "rec'd" and something that looks like an "and" before it, but I would not say whether it is "and" or "as received;" this is written in very black ink, with a purplish tint detectable, but it is not the ink of the body of the document; it is more recent, but it is not the ink which I have been describing thus far as a purplish ink—that is, it approximates very closely to the black; whereas in the purplish ink which I have been
254 describing the purple color is very well marked, and it has been written lightly and blotted immediately after, so that the purple color still shows. These words "and received" are very much darker than the other additions, but they are not as dark as the body of the document. The first letter of these words "and received" has the coppery color of the purplish ink; the first letter only. The first letter would be the sign for and, if it is "and received," and is written in a very dark ink, differing from that in the body of the document and differing from the additions heretofore noted. In line 17, in the words "Squier & Co.," "& Co." is written in the same purplish ink, as has been noted. The "on said notes" is also written in purplish ink. There are four alterations or retouchings in line 17 of a single letter, all in purple ink—the "o" in "to," the "o" and "r" in our, in "witness our hands," and the final "s" in hands. In line 18 a straight mark under "st" in "1st of August," the "d" and "a" in "day," and the period after "Aug." is in purplish ink. Line 19 is all in black ink, and appears
255 to me to have been blotted—that is, blotting paper appears to have been laid over it before quite dry. In line 19–2, as I have numbered it, which reads "and int. at 10 per cent. on said notes," thus far the line is in purple ink, the same as the ink heretofore noticed in the addition. We now come to a very complicated appearance where the word "added" can be detected in purplish ink immediately after the word "notes," and this has been written over in a very dark ink. The word "added," after this overwritten word, is in very dark ink, but shows a fresher tint than the black ink in the body of the document. With regard to the word that is written over this first "added" I am not at liberty to say what Mr. Wilson thought it was. The words "and received" he suggested to me as being compatible with the sense, but whatever it is I was unable to tell without referring to the context; whether it was intended to be left by the writer or whether he abandoned it and started another word is a mere matter of surmise. I have described the ap-
256 pearance of it. The signatures, the last writings, are both

in black ink, and have both been blotted. The two signatures, if I remember correctly, have been somewhat smeared, as well as line 19, which reads "the word said Edmonds above erased before execution." I find no smearing in line 19 1-2, "and interest at 10 p'r c't, etc." The word "Edmonds," however, has been retouched in purplish ink. I do not remember the letters. The two signatures, with that exception, are written in black ink.

Q. How does the ink in the interlineation "and received" correspond with the ink in the last line written over the word "added?"

A. It is closely similar to the word written over the word "added," and also to the final word, "added," which I have stated or meant to state was written in a very dark ink.

Q. How many kinds of ink appear to have been used in the execution of that instrument?

A. So far as this mode of investigation goes I have detected three, namely: A very dark kind of ink, a greenish black ink, and a purplish ink. The very dark ink has a trace of purple and is used in the words "and received" and in the word which I have
257 referred to as written over the word "added," and also being used in the last word, "added."

Q. How does the ink in line 19 compare with the ink in line 19 1-2 on page 2?

A. The purplish tint of line 1 1-2 as far as the word "notes" is quite distinct as contrasted with the greenish black of the line above, and under the glass presents a fresher appearance. The black ink is in most places cracked and dried on the paper, and this is a sign of age as compared with a fresh and uncracked surface.

Q. Do the marks appearing in the paper, so far as you can judge, seem to have been of the same date?

A. I have found no prominent difference. I have detected no difference, and if there had been a marked difference I could not have failed to have seen it.

Q. How great a difference in date, according to your judgment, would there be between the body of the instrument which is written in black ink and those portions which are written in purplish ink?

A. The absolue fixing of tha dates of writings by the ap-
258 pearance presented by them under the glass, which is only an enlarged view of what is seen by the naked eye, is a very difficult matter. The relative ages of two writings on the same paper can be determined more satisfactorily. Assuming as I do that the black ink was written on the 1st of August, 1883, I should consider it very improbable, if not impossible, that the purple ink had been written at the same date—that is, that the additions and alterations in purple ink had been written at the same date. If asked how much later they were written I would say that I have compared them with writings of which I know the dates, writings which I made myself for test purposes, and I find them nearly as fresh in appearance as writings in about the same kind of ink made in the early part of May in the last year.

I have not compared them with the same kind of ink at frequent

intervals between the 1st of August, 1883, and the present time, because I had no similar ink to contrast it with; but the appearances are not very different from the writings which I have, which
259 I know were made about ten months ago; but I repeat that the fixing of a date in this manner within a month or within two or three months with certainty is—except in the case of a very peculiar ink which I had made and experimented with myself—*is* something which I would not do.

Q. How do the last two lines upon page 2 correspond in regard to dates, according to your judgment?

A. There is this discrepancy is appearance which I have not referred to: They appear to have been written at different times. I may add that I have gained important additional knowledge by observing where the word "notes" is partly written over the "J" in Squier's signature, and where the word "added" was written over the final "d" intersects the word "before" in the line above. The line above and the signature below are both in black ink. If the writing had been made immediately after in this purplish ink of the lower line the letters intersecting with the former writing would almost necessarily have spread slightly, so that it could have been
260 detected with a glass. In one instance I thought I could detect a slight spreading, but on examination with a higher power I failed. The lines are just as sharp as if they had been written over clean paper. I will add that if these two lines—the black line and the purple line—had been brought to me on separate pieces of paper I would not give any opinion at all as to their relative ages; but the fact that they are on the same piece of paper renders it certain to me that the conditions to which they have been exposed have been the same. On separate pieces of paper one might have been shut up in a book and never exposed to the light or air and the other might have been handled and exposed a great deal, so as to have aged out of proportion with the other which was contemporaneous with it. In such a case I could give no opinion; but here I have a well-developed and aged writing, and on the same paper, immediately below it, writing with a fresher appearance, and it is not possible to imagine that the one has been carefully shielded from the action of the light and the other exposed to it.

261 Q. What would you say as to the words written in purplish ink upon the last page being written with the same pen as the other words written in black ink?

A. In the first page I have noticed a very great spreading of the nibs of the pen, and the additions are generally heavier and the lines broader than the body of the writing. On the second page it is somewhat apparent in the words "on said notes;" whether written with a different pen or not I would not be able to say, but I should infer that it was so or that the pen had been very badly treated subsequent to the first writing, which would be practically the same thing. I find no instance in the first writing of the nibs spreading out and leaving two faint lines with no ink between, but this is rather a characteristic of the second writing. I think that possibly the same pen would produce very different appearances if

the paper had been greased by frequent handling. If these corrections and additions were then made the appearances which I have noted might occur.

262 Q. What are your means of judging of the age of writings?

A. Simply a protracted comparison with writings of which the age is known and the knowledge acquired by long experience of the conditions which affect writings.

Q. What are your means of judging of the different inks used?

A. The appearance of the surface, the color, and the general appearances are the only means permissible where it is not allowed to use a test that might affect the writing. This test of color is, however, a very satisfactory one if made with care, and one does not allow himself to form a hasty judgement.

Q. You have made this examination with a microscope of considerable power, have you not?

A. I use for the greater part of the work a hand lens or a lens which I detached from a microscope, and I have used the compound microscope only for points that I could not make out with the other; in other words, a magnification of from eight to ten diameters will give the best results where very minute

263 markings are not concerned. The color of the ink is better made out where a low power allows you to have more light.

Q. In those cases where you could not be accurate with a microscope of a lower power you have used the compound microscope?

A. Yes, sir.

Q. With the use of these instruments is the difference between the inks very marked?

A. Very much so, sir.

Q. So that there can be no question about the matter in your mind?

A. None whatever, sir. I will state that I can take the Carter, the Maynard & Noyes, and one or two other inks and write with them on paper, and after a lapse of a few months or a year or two I can pick them out with a microscope without any difficulty by their color, only refreshing my eye by test writings. Between two black inks it is quite difficult, but in a black and a purple ink the difference remains for years.

Q. I understand that the body of the instrument is originally written in copying ink?

264 A. That is my impression.

Q. And the rest of it is not written in copying ink?

A. I could not say about that purplish ink; it does not look to me like copying ink, but the simple addition of a little glycerine to a purple aniline ink will make a copying ink. I should infer that it was not copying ink, because it has not smeared as the black ink has.

Q. Line 19 presents the appearance of having been blotted with common blotting paper?

A. Yes, sir.

Q. Line 19½, as I understand you, does not present that appearance?

A. No, sir; there is no indication of it. Line 19 and the upper signature are both partly smeared by being blotted; the lower signature has apparently been blotted, but is not smeared.

Cross-examination by Mr. WILSON:

Q. When did you first see the paper that you have in your hand marked Exhibit No. 1?

A. I think it was on the 28th of February.

265 Q. By whom was it shown to you?

A. Mr. Wilson brought it to my office.

Q. Who was with him?

A. Mr. Brooke Mackall.

Q. What did he say to you?

A. Mr. Mackall said that he had brought Mr. Wilson to see me about some professional business. I could tell by my office note book the exact date of the visit if it is of any importance.

Q. What did Mr. Wilson say?

A. We talked about different things.

Q. I mean only with reference to this paper.

A. He showed me this paper and said that he wanted to have it examined very carefully, especially as to whether it was all of the same ink, and I made a preliminary examination.

Q. At that time?

A. Yes, sir.

Q. Have you done any professional business for Mr. Mackall or Mr. Wilson before this?

A. Never, sir, that I can remember.

Q. You made a preliminary examination at the time it was first brought?

A. Yes, sir.

Q. Did Mr. Wilson make any suggestions?

266 A. He told me that he wanted me to be very careful about it. I remember, on looking it over, saying that the appearance of the ink where blotted was changed, and I detected some of a lighter color, but that I would have to look at it more carefully to see what was the cause of the difference in color.

Q. Was anything said, and, if so, what, concerning the supposed importance of the changes?

A. I do not remember, sir, at the first interview.

Q. Was there at the second interview?

A. At the second interview, I think, I made a more careful examination, and then I said, Gentlemen, to save time, if you will point — any particular places here that you want studied carefully I will attend to them; and Mr. Wilson said such a line and such a line; look at them carefully.

Q. When did the second interview occur?

A. I believe it was Saturday, but I could not trust my memory to state that. I could tell at once by my office note book, because I keep a list of all business visitors.

267 Q. Was the paper retained by you in the meantime?

A. No, sir.

Q. It was handed back?

A. Yes, sir.

Q. Who came with Mr. Wilson the second time?

A. Judge Willoughby, I think.

Q. Are you an expert in handwriting?

A. I do not claim to be so. I have had considerable experience, but I do not call myself an expert in a technical sense.

Q. Your special knowledge relates to the use of the microscope and the appearance of the ink?

A. To questions relating to paper and inks.

Q. You mention the month of May in connection with the age of the ink. When was that month first suggested to you, and by whom?

A. By myself.

Q. Was anything said by Mr. Mackall or by Mr. Wilson about the month of May?

A. I do not remember. After I had my first report I mentioned the age of the writing I had compared that with. I selected the 8th of May because I had a writing in purplish ink in my
268 book that was written on that date. I said to them as I have said here, or rather I said to Mr. Wilson as I have said here, that within one or two months it was impossible for me to draw the line as to the age. I then said, Mr. Wilson, I have found a writing that comes nearest to it about the 8th day of May, 1884, and then I said I don't know how that will fit into any hypothesis you have, but I simply give you the facts. My recollection is that a date was mentioned at some time, and, being a man who reads the papers, it occurred to me myself that it was after that time that it would be made, if it were made with a motive.

Q. That was in the month of May, 1884?

A. I could not fix the date, but I know that it was some time last summer.

Q. Did Mr. Wilson state what his hypothesis was?

A. I mean to say that I should have thought it was later than that. I had an idea of June or July fixed in my mind.

Q. Did Mr. Wilson state what hypothesis he had about the changes?

269 A. He was rather reticent about it; he neither advanced nor did I encourage any explanation as to the legal points involved, for, in the first place, I would not have been able to have understood them; and, in the next place, I preferred to know nothing in the case that would tend to bias me one way or the other.

Q. He did make a suggestion, however, as to the words supposed to be concealed in the last line?

A. He did not make a suggestion. He told me what he thought they were after I had told him about it. I told him that I could not make any sense of it at all, and that my impression was that there was no word there. I did not stop to read the line through to see whether it would make sense with the word.

Q. Will you be kind enough to examine the signature J. H

Squier, and state if, in your judgment, it was written at the same time and with the same ink that the body of the paper is written with?

A. I have already examined it and it is written with the
270 same kind of ink, but it is blotted. I have not made any special investigation as to the time, but it has the appearance of being substantially the same age as the line which I have marked 19, on page 2. It corresponds exactly in color and in apparent age with the signature J. B. Edmonds. They are both a little lighter than line 19, which I attribute to their having been blotted after they were written. They are both a little lighter, with the exception of the points where the word "Edmonds" has been retouched. I refer to line 19, to the words "said Edmonds above erased before execution." That is what I call line 19.

Q. Was the signature of J. H. Squier & Co. and the signature J. B. Edmonds written at the same time and in the same ink?

A. That is my impression, sir. I am very certain that they are written in the same ink; but it is not so easy to judge where it has been blotted.

Q. Was all of the signature J. H. Squier & Co. written at the same time and with the same ink?

271 A. I have looked at it to refresh my memory. It was, in my opinion. The "& Co." is disconnected by a slight break.

Q. How old do you suppose the signatures of J. H. Squier & Co. and J. B. Edmonds to be?

A. I take them to be about the age of the bottom line, the date of the instrument, August 1st, 1883, and if any interval elapsed I should not suppose it was more than a month, and it is not an interval that I can detect at this time.

Q. Is the writing of the words "J. H. Squier & Co." and that of the words on the 18th line in the same ink?

A. I take it to be the same.

Q. Do they look alike?

A. No, sir.

Q. What is the difference?

A. The 18th line, August 1st, 1883, is darker.

Q. Would you think they were written in the same ink?

A. Yes, sir; the light letters are precisely identical in color with the strokes in the signatures.

Q. Do you think they were written by the same person?

A. I would not say, sir.

Q. What is your judgement about it?

272 A. I think that, under the circumstances, I had better not give an opinion.

Q. Where does the purple and the newest writing begin in the 18th and 19th lines?

A. If I remember correctly, I did not say it began on the 18th line. There is none on the 18th and none on the 19th. If there is any it is a letter which I have failed to detect. I do not see a letter; it is all dark. (Witness examines paper with glass.) No; there is

a "d," an "a," and the dash on the "st," in the 18th line. I am not able to carry all these little points in my head.

Q. The old writing, then, ends with "execution?"

A. Yes, sir.

Q. And the new writing begins with the beginning of line 19?

A. Yes, sir—that is, with the two commas before the sign "&."

Q. These discoveries were made exclusively with the aid of the microscope, were they; this paper was subjected to no chemical action?

A. I would say no to the latter part of the question; but it was not exclusively with the aid of the microscope.

Q. With what other aid?

273 A. I took a slight liberty with the word "agreement," in order to see whether it was copying ink. The word "agreement" was a word in which I detected no change, and I moistened slightly a piece of paper and rubbed over it with my finger-nails to prove that it was a copying ink, and it impressed the word upon it. I mentioned this afterwards to the gentlemen, and told them that I was always very scrupulous never to do anything to change a writing, and that that word never could come into play.

Q. That was the only word?

A. Yes, sir; that was the only aid that I have, except the aid of the microscope.

Q. Nothing scratched or changed?

A. Nothing has been touched to it. I would not let one of the gentlemen make some pencil notes that he desired to make.

Q. Who was that?

A. Mr. Wilson. I told him that to save time he might give me the lines that he wanted examined. Those that he indicated did not comprise one-quarter of the lines which I found afterwards. I was careful to wash my hands every time I touched it, and to put a piece of blotting paper over it so that my breath would not in any way change it.

274 Redirect examination by Mr. WILLOUGHBY:

Q. Mr. Mackall was there at the first interview only?

A. Yes, sir; he came in to introduce Mr. Wilson, who happened to be, however, an old acquaintance of mine when I belonged to the Hancock and English club, of which he was chief.

Q. Mr. Mackall took no part in the conversation, did he?

A. None whatever, sir, that I remember. I do not know whether he remained there until Mr. Wilson left. If he made any remarks they made no impression upon my mind.

EDW'D M. SCHAEFFER, *M. D.*

275 WASHINGTON, D. C., *April 6th*, 1885—10 o'clock a. m.

Met pursuant to agreement.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of the defendant, Mr. Wilson.

JAY B. SMITH (recalled).

By Mr. WILLOUGHBY:

Q. I hand you eight papers purporting to be receipts signed by J. B. Edmonds, and I ask you what you know about them?

A. I found these among the papers of the late firm of J. H. Squier & Co.

Q. When did you find them?

A. I found them day before yesterday. They are in the handwriting, both the body of the writing and the signature, of Mr. Edmonds.

Said receipts are offered in evidence and marked Exhibits W. H. S. Nos. 9 to 16. Copies of said receipts are introduced in the record in lieu of the original and are in the words and figures following, to wit:

(EXHIBIT W. H. S. No. 9.)

WASHINGTON, D. C., *June 5th*, 1879.

Rec'd of J. H. Squier fifty dollars, am't due for May, '79, on the $4,000 investment made by him for me.

J. B. EDMONDS.

276 EXHIBIT W. H. S. No. 10.

WASHINGTON, D. C., *July* 1, '79.

Rec'd of J. H. Squier & — profits for June, '79, on the $4,000 investment, $50.00.

J. B. EDMONDS.

EXHIBIT W. H. S. No. 11.

WASHINGTON, *Oct.* 5, '79.

Rec'd of J. H. Squier & Co. fifty dollars, dividend on $4,000 investment, for month of September last.

J. B. EDMONDS.

EXHIBIT W. H. S. No. 12.

NOVEMBER 1, 1880.

Rec'd of J. H. Squier all dividends due to this date—Nov'r 1, '80.

J. B. EDMONDS.

EXHIBIT W. H. S. No. 13.

WASH'N, *Dec.* 30, '80.

Rec'd to Jan'y 1, '81, dividends on money invested in vouchers, in full, of J. H. Squier & Co.

J. B. EDMONDS.

EXHIBIT W. H. S. No. 14.

Received of J. H. Squier & Co. dividends to 1st inst. on money invested in vouchers May 2d, 1881.

J. B. EDMONDS.

277 EXHIBIT W. H. S. No. 15.

Received dividends on voucher purchases to 1st June, 1881, of J. H. Squier & Co.

J. B. EDMONDS.

EXHIBIT W. H. S. No. 16.

Rec'd of J. H. Squier & Co. dividends on voucher purchases to 1st July, '81.

J. B. EDMONDS.

Q. When Mr. Edmonds came to the office of Squier & Co. did he seem to come as a stranger or as having rights there?

(Question objected to by Mr. Wilson as leading and incompetent.)

A. He came quite often, and as a man having business there.

Q. How was it in reference to his going behind the counter without asking permission?

A. I have seen him behind the counter quite often, and I never heard him ask permission.

(Question and answer objected to by Mr. Wilson as incompetent and immaterial.)

Q. Was it usual for people not connected with the office to go behind the counter without permission?

A. No, sir.

278 Cross-examination by Mr. WILSON:

Q. Did you find any other receipts than these?

A. No, sir.

Q. Where were these found?

A. Among the papers of Squier & Co.

Q. Why were they not found sooner?

A. Because they were not discovered sooner.

Q. Have you made search for these papers before?

A. I have made search of the papers of Squier & Co., but not of the particular packages where I found these receipts.

Q. Where was Mr. Edmonds' safe in the office of Squier & Co.?

A. About the middle way on the east side.

Q. Behind the counter?

A. Yes, sir.

Q. He could not go to his safe without going behind the counter?

A. No, sir.

JAY B. SMITH.

Adjourned until Monday, April 6th, at 2 o'clock p. m.

279 *Defendant's Testimony.*

WASHINGTON, D. C., *March* 11, 1885.

Met pursuant to agreement.

Present on behalf of the defendant, Mr. Wilson; present on behalf of the complainant, Mr. Willoughby.

JAMES B. EDMONDS, a witness of lawful age, called by and on behalf of the defendant, being first duly sworn, is examined by Mr. WILSON:

Q. Some questions have been asked here of Mr. Smith, Mr. Squier's clerk, concerning vouchers of Gen. Schwenck. Will you please state *and* under what circumstances you obtained possession of the vouchers referred to?

A. During a large portion of the period that I took vouchers from Mr. Squier as security one or more of Gen. Schwenck's vouchers were among the number, and he told me that he had purchased them with my money, or given for them the money that I had loaned him.

Question objected to by Mr. Willoughby as incompetent.

The WITNESS: At the time of Mr. Squier's failure I had
280 six of these vouchers, for which I had surrendered others upon the assurance that they had been purchased with money loaned by me or from collections made on my vouchers. After the failure I collected two of the vouchers with Mr. Schwenck's knowledge and without any protest that there was anything wrong about it. After that he told me that these vouchers had been given as collateral for a note or acceptance which was still in Mr. Squier's hands, and that he thought that Mr. Squier, if he sold the vouchers, should have given up the note or the acceptance. I told him that I thought that was a question between him and Mr. Squier; that I had known nothing about it, and that I had purchased them in good faith; and, finally, in November or December, and possibly in January, the other four being uncollected, it was agreed between us that we would leave it to the paymaster to determine whether or not they should be paid to me, and some time afterwards I was advised that they went to my credit.

281 Q. State what, if any, information was given to you at the time of receiving them or at any time before the failure of Squier & Co. that they were held as collateral for any paper which Squier retained.

Question objected to as incompetent.

A. None whatever; on the contrary, I was told that they were purchased with collections of my vouchers. I took them in exchange for other vouchers.

Q. You heard the testimony given yesterday by Mr. Schaeffer concerning Exhibit W. H. S. No. 1, with reference to the color and the

supposed ages of the inks used therein. Will you please take Exhibit No. 1 and state when and by whom it was written, when — by whom signed, and when and by whom the alterations therein, if any, were made?

Question objected to on the ground that witness has once made a full explanation of this instrument.

A. This contract was drawn by me about the day it bears date, at which time I held Mr. Squier's notes for forty-four thousand dollars, dated about May, 1882, and a memorandum of the same
282 date concerning them. About this time we were to have had a settlement. I was urging a payment from Mr. Squier, but he had begged so hard to have a little longer time, and so he gave me a note for four thousand dollars which was to be paid in a few days and a note for forty thousand dollars which was to be paid later, as soon as he secured the loan he was expecting. In giving my testimony several days ago I was not quite able to recall the full particulars of the execution of this contract, nor am I now, except that Mrs. Edmonds has recalled conversations to the effect that it was finally delivered at my house. I am inclined to think that it was drawn at Mr. Squier's banking-house, but it is possible that it may have been drawn at my office, and that I simply called in at Squier's office on my way home. I am not sure about that; it was drawn either at my office or at his office on my way home. I saw him just a few moments at his office. I was insisting on that four-thousand-dollar settlement and offered to redraw the note for forty thousand dollars—that is, take one note and a memoranda
283 for forty thousand dollars. I think I did not have the note or memoranda of 1882. I think it was at my house, but he gave me such encouragement that he might perhaps cancel the four thousand dollars by the allowances or by payment that I think I left it with him, and on a subsequent date he came to my house with this agreement and notified me that he could not do any better, and he asked me to execute this agreement as it was, but called my attention to the fact that he could not make out certain parts of this writing. He said that I had written it with unusual blindness; that my writing had always puzzled him, but that now there were certain words that he could not make out, and that I had called him Squier instead of Squier & Co., which was his business name. In the course of the conversation he called my attention to the fact that in describing the notes I did not say anything about their being at ten per cent., and I found that I could not get the four thousand dollars settled, and I said to him, Very well, the other
284 matters are undetermined. He or I, at my house—I think it was done at my house—went over it to make the writing a little plainer, a word here or a letter even. There are some things in this that look as if they were made by him. I think they were possibly made by him, but I cannot tell how it was, for it is simply the making a word or letter a little plainer. What was done there did not alter the sense of the contract at all, because it is left just as it was, except that in describing the notes it says interest

at ten per cent., which was a fact, as the notes themselves show. Where it had said Squier it says Squier & Co., which was precisely as he brought it to me signed. I see several words where a word is made a little plainer by going over it, but without altering the sense of it. I do not think the agreement was changed in any material sense. Judging as well as I can from the ink, I would say that the body of the instrument must have been drawn at my office, at 4½ St., the signatures made at his office with another ink, and
285 the making it plainer was done at my house at a subsequent time. At my house I gave him up the notes and the agreement or memoranda dated May, 1882, and accepted this agreement and the two notes therein mentioned in their stead. I recall a portion of the conversation, because my wife in telling some one about it spoke about my asking him why he kept signing himself Squier & Co. when he was simply Squier. His explanation was that that had been his banking-house name; that his correspondents all still used the name, and that he preferred to retain it. I had some other conversations, but they related to another matter and to other people. I suppose I need not give them. There has been nothing changed in that agreement since that time. It could not have been much time between the time when I first drew this and the time when he delivered it to me in the house; it could not have been very long. I was thinking the other day that this was probably executed in
286 his office. I had several such agreements and they were usually done at his office, but at this time I did not have the agreement of '82 with me. I had gone from the Commissioners' office and did not have it with me, and I had to go to my house to get it, and I let the matter run because the amount of the notes was precisely the same, and it was only a matter of settlement. Mrs. Edmonds participated in this conversation at the time.

Q. How was it with reference to the date of that instrument that the instrument and the notes of which you speak were brought to you and left with you by Squier?

A. That I cannot fix, but it must have been the same month. The memorandum was very much like the other; it is a little longer; that is all; but the amounts of the notes were the same.

Q. It must have been during the same month?

A. Yes; it must have been during the same month; I do not think it went over that.

287 Q. The paper has been in your possession since that time?

A. It has.

Q. State if any alterations, additions, or erasure have been made by you in that paper since the day when it was delivered to you by Mr. Squier as being a perfected agreement.

A. None in the least. I am sure that there has been none. Of course, I have left it with my attorney. I had it when Mr. Squier first got up, and I showed it to him and had it with me in the presence of my attorney, Mr. Wilson. I do not think there has been the slightest change made in it.

Q. This contract and this memorandum was the only one ever

made when there was not a settlement of the amount actually due at that time?

A. When this was made there was a difference between us with regard to a month or some small item; I should say that it was not one hundred dollars either way, and he objected to making new notes, so we could get a settlement up to that date. On a settlement a new note and a new memoranda were substituted for
288 the prior ones. That had occurred in 1882; it had occurred in 1881 and on other occasions, and every time the memoranda recited that there was so much invested in vouchers, and that the vouchers mentioned in the contract in every instance were in my possession; that I had that amount at the time. When this was executed, for example, I had in my possession and in my safe forty-four thousand dollars' worth of vouchers. It may have varied one or two hundred dollars either way, but it was substantially that amount. Mr. Squier always told me that my affairs were kept by themselves; that they were not to be mixed with others, and that if I gave him vouchers to collect it was that money only that would go into the new voucher.

All testimony that is contradictory or in addition to the agreement is objected to by Mr. Willoughby.

The WITNESS: I will say that the forty-four thousand dollars for investment in the purchase of vouchers referred to in this
289 agreement were actually in my possession when this agreement came to me, and so it was in every case and with every agreement that I ever made with him. The memorandum was simply a statement as to the amount that I then had and the loan as it stood at that date after making proper credit. I think that I have stated that there never had been any written agreement between us other than the notes, until we wished to take some of the vouchers for collection, without at the same time giving me others in lieu of them.

Q. By the order of the court the safe in which your vouchers were placed was opened and a schedule made of the contents and filed in court. A copy of the schedule is presented herewith and marked Exhibit W. H. S. No. 7, and is as follows, to wit:

EXHIBIT W. H. S. No. 7.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

THERON C. CRAWFORD *et al.*
vs.
JOSIAH H. SQUIER *et al.*
} Equity, 9051.

290 It is ordered that the defendant Squier may indorse such of the vouchers claimed by Mr. Edmonds as are made payable to Squier himself, and which were turned over to Mr. Edmonds,

under order of the court, in order that they may be collected. It is further ordered that Mr. Edmonds may return such of the vouchers as he pleases to the assignee or the receiver, if one be appointed in his place.

W. S. COX, *Justice.*

A true copy.
Test:

R. J. MEIGS, *Clerk,*
By J. JAY CAMP, *Ass't Clerk.*

EXHIBIT W. H. S. No. 7.

List of Vouchers Tendered by James B. Edmonds under Order of the Equity Court Passed July —, 1884.

V. E. Stolbrand, Sept.	$128 33		
V. E. Stolbrand, Oct.	128 33		
V. E. Stolbrand, Nov.	128 33		
V. E. Stolbrand, Dec.	128 33		
W. E. Welbourne, Mar. 1, '84, note 12 mos.	1,000		
J. T. Hollenburger, Int. Dep't, Sept.	360		
A. L. Ruttle, Treas. Dep't, Aug.	350		
S. S. Carroll, Oct.	468 75		
S. S. Carroll, Nov.	468 75		
291 W. M. Porter, War Dep.	420		
W. M. Porter, War, Aug't	333		
W. M. Porter, War	130		
W. M. Porter, War	130		
S. S. Carroll, July	468 75		
S. S. Carroll, June	468 75		
E. M. Hughes, Navy allotment, July	200		
E. M. Hughes, Aug.	200		
E. M. Hughes, Sept.	200		
E. M. Hughes, Oct.	200		
E. M. Hughes, Nov.	200		
E. M. Hughes, Dec.	200		
E. M. Hughes, June	100		
O. C. Berryman, Oct.	75		
O. C. Berryman, Dec.	75		6,636 32
O. C. Berryman, Sept.	75		
O. C. Berryman, Navy all't, Aug.	75		
O. C. Berryman, July	75		
O. C. Berryman, Nov.	75		
O. C. Berryman, June	75		
Crosby, June	200		
Crosby, July	200		
Crosby, Aug't	200		
Crosby, Sept.	200		
Crosby, Oct.	200		
Crosby, Nov.	200		
Crosby, Dec.	200		

	A. V. Jaynes, June	140
292	A. V. Jaynes, July	140
	A. V. Jaynes, Aug.	140
	G. B. Throckmorton	195
		$8,951 32

Q. Will you please state what disposition was made by you of the vouchers described in the foregoing schedule?

A. As I understand it, the vouchers described in the schedule which I now present was tendered by me, under the order of the court of equity, through my attorney to the attorney of the receiver, and he declined to receive them.

Q. State what vouchers have been collected by you and what sums have been received by you.

A. A little over fifteen thousand dollars. As I foot it up it is between fifteen thousand three hundred and fifteen thousand five hundred.

Q. You are asked to furnish a statement of the respective vouchers that have been collected by you.

A. I present herewith a list of the vouchers and the amounts
293 that I have collected. Said list is marked Exhibit W. H. S. No. 8, and is in the words and figures following, to wit:

EXHIBIT W. H. S. No. 8.

Cushing	233 33
Vedder	150
Pardee	150
Mullins	157 50
Stottrand	116 67
Humphries	162 50
Belger	165 26
Stottrand	116 67
Schriner	175
Payne	216 67
Trout	131 25
Wolf	162 50
Schwenck	175
Lowe	150
Wolf	162 50
Herr	137 50
King	146 66
Schriner	175
Kirkman	210
Huxford	157 50
Swift	137 50
Bennett	233 33
Throckmorton	291 67
Kirkman	210
King	146 66

Levy		140
"		140
Wolf		162 50
Belger		218 75
Jones		120
Wolf		175
Stottrand		116 67
Richmond		162 50
Forsythe		333 33
McDougal		233 33
Cotton		173 33
Cotton		173 33
Huxford		157 50
Hurr		137 50
Kirkman		210
Lowe		150
King		146 67
Trout		131 25
Swift		137 50
Schwenck		175
Humphries		162 50
Schriner		175
Trout		131 25
Lowe		150
	Swift	137 50
294	Levy	140
	Converse	131 25
Schwenck		175
Kirkman		210
Swift		137 50
Wolf		162 50
Levy		140
Payne		216 67
King		146 66
McDougal		233 33
Throckmorton		291 67
Throckmorton		291 67
Hurr		137 50
Swift		137 50
King		146 67
Wolf		175
Levy		140
Swift		125
King		146 67
Mullins		137 50
Kirkman		210
Schwenck		175
King		146 67
Schwenck		175
Payne		216 67
House		131 66

Huxford	157 50
Trout	131 25
Payne	216 67
Trout	131 25
Ramsey	210
Huxford	157 50
Lowe	150
Schriner	175
Kirkman	210
Schwenck	175
Trout	131 25
Kirkman	210
Wolf	162 50
Levy	140
Swift	137 50
	15,390 26

Exhibit W. H. S. No. 8.

Q. The vouchers not described in either of these schedules you still have?

A. Yes, sir.

295 Q. Have you made a statement of the amount due you from Squier & Co. at the time of the failure?

A. At the time of the failure I had received ten per cent. interest on my loan and an excess of four thousand one hundred and sixty dollars.

Q. So that there was due the principal less four thousand one hundred and sixty dollars?

A. Yes, sir—that is, there was that offset which Mr. Squier was entitled to have against the forty-four thousand dollars whenever there was a settlement.

Q. Counting the interest at ten per cent.?

A. Yes, sir; at ten per cent.

Q. So that there was due at the date of the failure forty-four thousand dollars less four thousand one hundred and sixty?

A. Yes, sir.

Q. Please state whether in reply to the request of counsel for the complainant you have produced the voucher of Colonel Forsythe and his letter concerning the genuineness of the letter.

296 A. Yes, sir; I now produce for inspection the voucher of Col. Forsythe for September, 1884, for the sum of $333.33, together with one of his letters, in which he declares it to be a forgery.

The WITNESS: I wish to make a further statement. The counsel for the complainant asked me the other day about Squier calling the money that he had paid me dividends. I remember a conversation in which he told me that he called what he paid me dividends. He said that his payments to me were not like those to any one else; that theirs were plain interest or plain principal, but mine was a little of both, and as it was only what my money earned

he thought that dividend was the proper name for it, and so that was what he would call it. I could not think when I was asked before what his explanation was. I knew that there was something about it, but I could not recall it.

The foregoing statement of the witness is objected to by Mr. Willoughby.

Cross-examination by Mr. WILLOUGHBY:

297 Q. At what time did you say that Mr. Squier gave you these vouchers of Gen. Schwenck's?

A. Before his failure, and probably at different times, but I cannot recall the exact dates. They were taken in exchange for other vouchers that I let him have.

Q. Can you recall any particular time that he delivered these vouchers to you?

A. Yes. He delivered some of them among the last vouchers that I received from him, which was probably less than a month before his failure.

Q. What amount of vouchers did you receive at that time?

A. I cannot remember the exact amount. The last time that he gave me vouchers he said, I want so many vouchers, and here is an equal amount in place of them.

Q. State, according to your best estimation, what the amount was.

A. There were several thousand dollars, but I cannot tell you the exact amount.

Q. Ten or fifteen thousand dollars?

298 A. No; not ten or fifteen thousand; not so much as that. It was a few thousand dollars; more likely from three to six. It is mere guess-work.

Q. What other vouchers were delivered to you at the same time?

A. There were some of the naval allotments and some others. I cannot recall all of them.

Q. How came he to particularize Mr. Schwenck's vouchers at that conversation?

A. I do not think he particularized. He particularized him before when he gave me vouchers.

Q. When was that?

A. At different times.

Q. But at some one particular interview he took occasion to say that he had purchased these particular vouchers with your money?

A. Yes. Once or twice I wondered at Mr. Schwenck's selling his vouchers, for I supposed that he was a rich man, and I asked especially about him, because I was surprised to see his vouchers on the market, and that led to the conversation. I recollect it, because I told Squier that he had once represented Schwenck to me as being a rich man.

299 Q. When was that?

A. I cannot give the exact time. It was when I took the vouchers. He told me that he had purchased them with my money,

or perhaps it was when he took somebody's else voucher and gave me that instead.

Q. You cannot recall any special occasion?

A. No; but I recall two or three such conversations. They occurred from time to time. I recall similar conversations in regard to other persons.

Q. I understood you to say some days ago that at the time this Exhibit No. 1 was made it was made at the office of Mr. Squier, and that at the same time you made another writing, of which this is an amendment. What do you say about that now?

A. It was either at my office or at Mr. Squier's office.

Q. You drew up two papers on that day. Is that correct?

A. On that day I had the other one, but it was objected to for several reasons. When I came to draw it I saw that it was
300 not sufficient, so I drew a new one, which was a little clearer. He said that he cared nothing for a duplicate. That conversation was at his bank. I had this agreement at his bank on that day.

Q. You mean that you had his first memorandum at his bank that day?

A. I had this, because I left it there.

Q. Did you have the first?

A. Yes, sir.

Q. He objected to the first, because it did not provide for the application of the money received to the notes?

A. Now you are referring to what I told you about the contract of September, 1881.

Q. No; I am referring to Exhibit No. 1.

A. You are asking with reference to what I answered with regard to the contract made in 1881. In 1880 I drew a contract, the one you have produced here.

Q. I am not inquiring about that now.

A. What you impute to me is what I said about that. I think you are incorrect. I think I had the second one there and
301 that was imperfect, and I think I drew the draft of Exhibit No. 1, but that was only the first draft, and it was such that it was of no use and was destroyed on the spot. I drew that at my office or I drew it at his bank. It was defective; it was on a small slip of paper. The other one I drew on a full sheet of paper, either at my office or at his bank.

Q. Am I right in understanding you to say that the objection which Mr. Squier made to that imperfect paper was that it did not provide for the application of money received by you to the notes?

A. Yes, sir; that one in 1880.

Q. I am speaking about the contract of 1883.

A. I think you get the thing mixed. I notice in looking over the testimony that it is written out as though you were talking about one and I am talking about another.

Q. This Exhibit No. 1, as it was drawn up without corrections, does not provide for the application of the moneys received by you

to the notes. Was the other paper drawn up by you on the
302 same day like this in that respect?

A. I cannot tell what the other one was. It was destroyed. It was less formal, but it was intended to have been substantially like this. It was one which I told him he might make into a duplicate if he cared for it as a memoranda, but, as he cared nothing about it, it was destroyed, and of course I cannot tell whether it was exactly like this. I know that there was nothing to credit anything on except the notes, and this was simply a memorandum controlling the loan and the use of the money which I loaned him.

The answer, so far as not responsive to the question, is objected to by Mr. Willoughby.

The WITNESS: I will say this: If the former contract expressed the real agreement it did correspond substantially with this, but as an act of memory I cannot say positively. That, however, was the real agreement. We never had any other agreement and there was never any other understanding between us. It was a loan,
303 and the contract simply declared how the money was to be used, and in the absence of that use it was to come back to me.

The answer, so far as not responsive to the question, is objected to by Mr. Willoughby.

Q. I understand that when Mr. Squier came to you he proposed to pay you profits of one and one-half or two per cent. per month, but that you told him you would not take but ten per cent. per annum. Can you account for having drawn up this contract for 1880 and any other contract that you may have drawn without providing for the application of moneys received to the notes?

A. What he proposed to pay me was one and one-quarter per cent. per month. There never was any contract that became such, in fact, between us, except that he should have credit on the notes for any excess over ten per cent. That was the original oral contract, and that went into every contract that ever passed between us as such.

304 Q. When you drew up that writing of 1880 it was to express your idea of the understanding between you, was it not?

A. It was, but it did not.

Q. It did not express your own ideas of the contract?

A. Not in that particular.

Q. When you drew up this agreement did it express your idea of the contract?

A. Except in that particular it did, and the moment he suggested that that should be put in I said all right.

Q. Can you account for that being left out both times?

A. Yes; the understanding was that it was a loan, and it was intended for nothing but a loan. All there was about the contract was to control the use of that loan and the securities which I held. The only cause for any contract was that he asked me to loan him

back a part of the securities which I had. The note itself
305 was part of the contract and was referred to in it, and the note itself declared that I was to have only ten per cent. interest.

The answer, so far as not responsive to the question, is objected to by Mr. Willoughby.

Q. Can you tell why, if the understanding was that this was to be simply a loan at ten per cent., you provided in the agreement that he was to pay you monthly profits at the rate of one and one-quarter per cent. on forty thousand dollars and one per cent. per month on four thousand dollars?

A. He asked me for the money as a matter of favor to enable him to deal in these vouchers, representing to me that it would be a great accommodation for him to use my money in that way, and that he would pay me one and one-quarter per cent. a month. The contract would have been simply for ten per cent., but he said I will pay you fifteen, and the excess over ten you can apply on the notes, and as he kept coaxing me to let him have larger sums I
306 simply settled with him by giving him money for the excess without taking notes for it whenever we had a settlement.

The answer, so far as not responsive to the question, is objected to by Mr. Willoughby.

The WITNESS: The reason why it was one and one-quarter per cent. on forty thousand dollars and one per cent. on four thousand dollars was that the forty thousand dollars was to run for some time, and one per cent. on four thousand dollars made it precisely the same sum that he had been paying me since May, 1882. He begged me not to make it any larger amount. The four thousand dollars was to have been paid in a few days, in which case I should have charged him nothing for that. It resulted from my accepting his proposition and from his refusing to make the payment one thousand dollars a month, as I asked him to do. I asked him to reduce the loan a thousand dollars a month.

Q. I asked, if this was made simply as a loan, why did you
307 provide that profits should be paid in that way?

A. Only because that was the way that he put it. There was no special reason for it, except that he put it that way.

Q. You wrote the agreement, did you not?

A. I wrote as he proposed it. There was a long time when there was no agreement at all; nothing but the notes.

Q. In this agreement marked Exhibit No. 1, on page 2, line 11, there appears to be the word "interest" written over the word "profit;" is that correct?

A. I think not, but it may be so.

Q. Can you not see by the appearance of the paper that there has been an erasure there?

A. I really cannot tell. I do not know whether that is so or not. All that I know is that if it is so it was made probably by him. He spent a part of an evening at my house, at which time we had this paper and the whole matter was discussed.

Q. Can you give any reason why, when you wrote at the bottom of this paper that an erasure had been made before execution, you did not also note this erasure in line 11?

308 A. No; I don't know, and I don't know why the erasure of the word "therefore" was not noted either. I don't know whether I noticed it at that time, if such it be.

Q. Can you give me any reason why, when you commenced stating the changes that had been made, you did not complete it at that time?

A. No; inadvertance probably; neither can I explain why the addition of "& Co." was not noticed. It was probably not thought of. I am inclined to think the "& Co." was put in by Mr. Squier himself, and I don't know but that this word "interest" was written by Mr. Squier himself.

Q. You don't know about that?

A. No; I cannot tell you. I don't know why any of the erasures were noted, because there was no real necessity for it.

Q. These last two lines were written by you, were they not?

A. I don't know whether they were or not. The first one was, but I should think that the last two or three words of the next line were not.

309 Q. In whose handwriting are they?

A. I don't know in whose they can be unless in Squier's. They must be either his or mine, and I am inclined to think they are not mine. I think the preceding words are mine, but that is something about which I would not be positive. I think that the "rs" in "vouchers," that has been made plainer, was put in by Mr. Squier. I think that the word "cent," where it is written over, was put in by him. He ran over it, and where he saw fit to make a change, and where it was satisfactory to both of us, he made it. I gave him up the old contract and the old notes and took the new one.

Q. I understand you to say that the amount of the notes held by you in May, 1882, was forty-four thousand dollars?

A. Yes, sir; I will not say that it was just forty-four thousand, but that is my impression. It must have been not far from that.

Q. And the same amount was, of course, held by you in August, 1883?

A. Yes; I know that that was the amount in '83, and it

310 could not have been far from that in 1882, but I cannot be sure of the exact amount.

JAS. B. EDMONDS.

WASHINGTON, D. C., *April 6th*, 1885—2 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainant, Mr. Willoughby; present on behalf of the defendant, Mr. Wilson.

SPENCER M. CLARK, a witness of lawful age, called by and on behalf of the defendant, being first duly sworn, is examined by Mr. WILSON:

Q. State your name and occupation and whether or not you are of lawful age.

A. My name is Spencer M. Clark; I am employed in the Agricultural Department, and I am 73 and ¾ years old.

Q. State what knowledge of and what experience you have had with the microscope and as an expert in handwriting and writing inks.

311 A. I have worked with a microscope, more or less, ever since I left school. I have been examined as an expert in handwriting since I was five and twenty years old. I have had more or less experience with the properties of ink in being examined as an expert in handwriting.

Q. You were chief of the Bureau of Engraving and Printing at one time?

A. Yes, sir; I originated that bureau and ran it for eight years.

Q. Have you seen the paper that is in evidence in this case marked W. H. S. No. 1?

A. I have.

Q. Will you state whether, in your opinion as an expert, a microscopist by the use of a microscope could determine the respective dates of the writings on said paper made with different inks?

Objected to as incompetent.

A. I could not without knowing the constituent parts of the ink and of what materials the different inks were made, the reason being that one kind of ink might be affected by the atmosphere much quicker than another.

312 Q. Taking the body of the paper writing to have been written in August, 1883, state whether, in your opinion, it is possible to give, with any definiteness or certainty, the dates of certain additions on said paper, and particularly of the last line in the agreement—that immediately preceding the signature.

Objected to as leading and incompetent.

A. I cannot say what is possible. I can only say that I could not, by the use of the microscope, without knowing the constituent parts of the ink, determine anything about the dates of the writing. What it is possible to do I don't know.

Q. Have you ever known or have you ever heard of the microscopist undertaking to determine definitely by inspection the dates on which writings were made?

A. I never have.

Q. Assuming the paper writing in evidence to which reference has been made to have been written on the 1st day of August, 1883, can you give any opinion as to the date when the last line of

313 said writing was written?

A. No opinion that would be of any value; it would be a mere guess.

Q. You have examined this paper through a microscope?

A. Through a magnifying glass—yes, sir; not very closely, but I have looked at it casually. I brought no magnifying glass with me, but I have looked at it through one.

Q. Of what value is a comparison of a writing made on a certain

day with other writings supposed to have been made on or at about the same time, in determining the ages of the respective writings?

Objected to as incompetent.

A. If the examination was confined to a microscopic examination, I should think it was of very little value.

Q. In determining the age of a certain writing by comparing it with other writings made on a known day, on what condition would a microscopist rely in making up his judgment as to the date of the respective writings?

314 A. I should first want to know that the inks of the two writings were of the same character, and then, in addition to my microscopical examination, I should want to use some chemical test.

Q. In comparing writings with other writings made on a known and definite time, of what value would such a comparison be, unless it were known that the inks were identical or similar?

A. Unless the inks were identical it would, in my opinion, be of very little value.

Q. Would similarity of inks in their appearance be of any value or consequence in making a test?

A. I have already twice answered that question. Unless I knew the constituents of the two inks I should not at all rely upon any microscopical examination.

Q. Will you please state whether, in your opinion as a microscopist, the last line in the writing before the signatures appears to be very much fresher than the other parts of the paper?

315 Objected to because the witness has already stated that his opinion on that point would be of very little value and mere guess-work, and because he has already said that he could not determine without knowing the ingredients of the two kinds of inks.

A. I do not suppose that the microscope gives me any clue to the dates of the writing or to the times they have been exposed to the atmosphere, unless I know the ingredients of the inks and unless I know that they have been acted upon alike by the atmosphere.

Cross-examination by Mr. WILLOUGHBY:

Q. When were you first spoken to by Mr. Edmonds in relation to this paper?

A. I have never been spoken to by Mr. Edmonds. I don't know him.

Q. Or by any one else?

A. Mr. Wilson has spoken to me about it.

Q. You say that you have examined this paper with a magnifying glass?

A. Yes, sir.

316 Q. Have you examined it with a compound microscope?

A. No, sir.

Q. You examined with a magnifying glass of how great power?

A. I should say that it was of about ten diameters; I have not measured it.

Q. Have you ever before been examined as a witness in regard to the different dates of writings?

A. I do not now remember that I have been examined as to dates; my experience has been chiefly in the comparison of handwritings with each other to prove supposed forgeries.

Q. Do you know whether or not these are different inks in this paper?

A. I know nothing of the inks whatever. I never have seen them. I have only seen the handwritings there——

Q. You are an expert in comparison of handwriting, but not so much an expert as to the different kinds of inks and the dates of writings?

A. Not as to the dates; but I am familiar with the different kinds of inks, because I have made almost every variety.

317 Q. You have made no chemical examination of the inks upon this paper?

A. None whatever.

Q. Of what is common writing — composed?

A. The inks most in use now are aniline inks. They are also made from nut-gall and various other substances.

Q. Can you name the substances?

A. The ordinary ink of commerce used to be made from nut-gall.

Q. Anything else?

A. Yes, sir; different preparations were used by different people.

Q. Can you name any other substance?

A. I have seen an ink made from Frankfort black. I have seen an ink made from common lamp-black.

Q. What other ingredient do you add to nut-gall to make ink?

A. Vinegar will make an ink with nut-gall without anything else.

Q. Will nut-gall alone make ink?

A. Not without some acid to act upon them.

Q. What is used to make a purplish ink?

318 A. The purple ink that I am acquainted with is an aniline dye.

Q. What is black ink made from?

A. I have already said that it is made from an aniline dye and from other substances; nut-galls and various kinds of black.

Q. Have you made the colors of inks a special study?

A. Not of writing inks. I have made the colors of printing inks a special study.

Q. You are more familiar with printing inks than with writing inks?

A. I do not know that I am more familiar with it. I am more familiar with the manufacture of it, but I have used more writing ink than I have printing ink.

Q. What are the properties of printing ink as compared with the common ink?

A. The first difference is that the writing is very much more fluid than the printing ink.

Q. What different ingredients are there in printing inks?

319 A. The basis of all black printing inks is lamp-black.

Q. How long has it been since you have done any continued work with the microscope?

A. I use my microscope occasionally; sometimes a half a dozen evenings in a week, and at other times not more than one, depending upon whether I have anything to do with it or not.

Q. Have you ever compared writings of different dates for the purpose of seeing how long a time had intervened between them?

A. Not to ascertain the length of time between them, but I have experimented to see if one was of a more recent date than the other, notably in the case of the trial of a man where there was a name written on the inside lining of a boot and it had been written over by another. They wanted to know whether I could take off the upper writing without disturbing the other, and I told them that I could do so if it was of a more recent date. They sent it to me,

and I did it, thus showing that the upper one was written

320 last. In other words, I took off the more recent with a little oxalic acid and left J. W. Booth's name underneath. That is the only case that comes to my mind where I had anything to do with the difference of dates.

Q. Any ink changes in appearance by the lapse of time, does it not?

A. Yes, sir. I do not know of any ink that is absolutely unchangeable; I think that India ink comes the nearest to being an unchangeable ink.

Q. You could generally tell whether ink was freshly written within a few days or whether it was written within two or three years, could you not?

A. Yes, sir; by the use of reagents. I could not, with my knowledge, by the aid of the microscope alone.

Q. Does not writing which is freshly written appear different even to the naked eye from that which is old?

A. I should not think that there would be any strong difference if it were written with the same pen and with the same ink.

321 Q. You think, then, you could not tell as to the date of a writing whether it was one month or five years?

A. I do not think I could tell the difference in time. I should not like to set any limit, but I should not look at it with a microscope with a view to determining the date of a writing; I might, perhaps, use it in connection with reagents.

Q. Suppose an expert should testify that he made it his business to examine the dates of writings, and that he had kept writings along from time — for several years past, and that in comparing this writing with some one of those he should say or undertake to say within the period of a year or two as to when the one was written, are you prepared to say that the testimony of such an expert would be of no value?

A. No; I do not pretend to judge what other people can do. I am

only telling you what I can do myself. I do not propose to limit other people's knowledge by my own.

322 Q. Can you tell if there are different inks in this writing which has been presented to you?

A. Yes, sir; my impression would be that they were in different inks. The signature here appears to be blurred; perhaps it may have had a blotter put over it.

Q. Are the signatures in the same ink with the body of the paper?

A. This lower signature appears to me to have been written with one kind of ink and then touched over in spots with another kind. That is the visual appearance. The other signature seems to have been written at the same time.

Q. With the body of the paper?

A. I do not think it is clear from this; it may be, but the ink appears to have been taken off by a blotter or some other process, so that it appears to be lighter than the other. The body, apparently has not been blotted, but one has been used upon the signature, which would take off more or less of the ink and leave it lighter.

Q. Are the two signatures in the same ink?

323 A. For the reason I have already given I cannot draw a positive conclusion with regard to that upper signature. Blotting a piece of writing has about the same effect upon it that would be produced by diluting the ink with water.

Q. What has been you- occupation for the last ten years?

A. It has been various. For the last two years and a half I have been in the Agricultural Department.

Q. Have you been in any business requiring especially the use of the microscope?

A. Yes, sir; prior to that time I was employed in getting up machinery for the manufacture of screws and building screw factories, and in making that machinery I used the microscope a great deal. I spent some two years in making the machinery.

Q. Have you been engaged in any business which required the use of a microscope in connection with writings or with inks?

A. Not within the past ten years.

324 Q. Can you tell the different kinds of inks and of what they are made without a chemical examination?

A. No, sir.

Q. Are you aware that an experienc- expert can?

A. No, sir.

Q. You don't know whether they can or not?

A. I do not put a limit to other men's abilities. I do not know anybody that can do it.

SPENCER M. CLARK.

325 *Testimony in Rebuttal.*

Dr. EDWARD M. SCHAEFFER (recalled).

By Mr. WILLOUGHBY:

Q. Can you tell the different black inks of commerce and of what they are composed without a chemical test?

A. I can tell almost all the prominent black inks of commerce from one another by the color of the writings. I have made a special study of it. I can take the Maynard and Noyes ink, Carter's writing fluid, and Carter's copying fluid and Arnold's black ink and determine writings made by myself or other persons after a lapse of a year or more. The local color remains distinct.

Q. Can you tell whether these signatures are of the same ink as the body of the instrument?

A. From my previous examination of this paper with a low power and also with a compound microscope I have arrived at the conclusion that the signatures are in the same ink or same character of ink with the body of the document, with the exception of the
326 lower signature, which, as I stated in my previous examination, has been touched up with another ink.

Q. How does a magnifying glass of ten diameters compare with the instrument used by you?

A. A magnifying glass of ten diameters is an excellent lens for detecting errors in engraved notes or alleged forgeries, and also for determining the color if it should be moderately achromatic, but I have found delicate distinctions of color that it would have been impossible to have seen with a magnifying glass of ten diameters which could be brought out very distinctly with a power of about seventy-five diameters on a compound microscope.

Q. What has been your experience in comparing the dates of writings within the last few years?

All the above testimony is objected to by Mr. Wilson as not being testimony in rebuttal.

A. Since the spring of 1883, when I was summoned in the Abrahams note case, in Baltimore, I have made very extended
327 observations with regard to this particular point. In that trial I testified as to the different character of the inks on the endorsed notes as determined by the color alone. I was examined in 1883 and in 1884 in different cases. In this city during the last five years I suppose I have had — least five or six cases where the relative ages of inks were concerned.

Q. The relative ages of inks, in your opinion, can be determined by experience derived from a long and careful study of the subject?

A. I would not consider that a person who took it up incidentally would arrive at very precise conclusions in any one particular case.

Q. Will nut-galls and vinegar make black ink?

A. No, sir; it requires the presence of a salt of iron. The photo-

sulphate of iron is usually employed; the sulphate of copper is sometimes used.

Q. What is used in making purplish ink?

328 A. Extract of logwood sometimes.

Cross examination by Mr. WILSON:

Q. Can you state in what ink the body of this paper was written?

A. I consider it to be written in a copying fluid, and it is very similar to Carter's, but I did not make an extended test to determine the particular kind.

Q. What are the other two kinds of ink used?

A. One is an aniline ink, and they are made by a great number of manufacturers. I have made them myself, and any one can make them. The other I formed no opinion about.

EDW'D M. SCHAEFFER, M. D.

329 In the Supreme Court of the District of Columbia. In Equity.

JESSE B. WILSON, Receiver, etc., *vs.* JAMES B. EDMONDS. } No. 9245, Eq. Doc. 24.

I hereby certify that the foregoing depositions were taken down by me in short-hand from the oral statements of the witnesses under the authority of an order of the supreme court of the District of Columbia designating me as the examiner in the above-entitled cause. Said depositions were by me transcribed, and, having been read over by the said witnesses, were subscribed by them in my presence, said witnesses before testifying being duly sworn to testify to the truth, the whole truth, and nothing but the truth.

I further certify that I am not of counsel or otherwise interested in said cause.

WM. HERBERT SMITH,
Examiner in Chancery.

Fees not paid.

WM. HERBERT SMITH.

330 *Stipulation to Calendar Cause. Filed April 6th*, 1886.

In the Supreme Court of the District of Columbia. In Equity.

WILSON, Receiver, *vs.* EDMUNDS. } No. 9245.

It is hereby stipulated and agreed that the above-entitled case may be placed on the calendar for hearing at the April term, 1885.

It is further stipulated and agreed that all the books of Squier and Company may and shall be considered in evidence and can be referred to by either party in the hearing of the case.

It is also stipulated and agreed that the report of the auditor on the liabilities of Squier and Co. filed in the case of Crawford *vs.*

Squier be considered in evidence in this cause and accepted as being a true statement or summary of the indebtedness of Squier & Co. (without reference, however, to the claims of the receiver against J. B. Edmunds or general or other claims not before the auditor).

W. WILLOUGHBY,
Sol. for Compl't.
NATH'L WILSON,
Sol. for Def't.

331 *Decree of Special Term Dismissing Bill. Filed June* 22, 1885.

In the Supreme Court of the District of Columbia.

JESSE B. WILSON, Receiver, Compl't,
vs.
JAMES B. EDMUNDS, Def't.
} Equity No. 9245.

This cause coming on to be heard upon bill, answer, replication, and testimony, and after argument by counsel—

It is ordered, adjudged, and decreed by the court in equity sitting this 22d day of June, 1885, that the bill of complaint be, and the same is hereby, dismissed with costs.

And from this decree the plaintiff prays an appeal to the court in general term.

W. S. COX, *J.*

332 *Filed June* 30, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 30th Day of June, 1885.

JESSE B. WILSON, Receiver, &c., Plaintiff,
vs.
JAMES B. EDMONDS, Defendant.
} No. 9245.

The plaintiff having appealed to the general term from the decree pronounced herein on the 22d of June, 1885, in the equity court, and Samuel H. Walker, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

JESSE B. WILSON, *Appellant.*
SAM'L H. WALKER, *Surety.*

Approved:
W. S. COX, *J.*

[Endorsed:] No. —. —— —— *vs.* —— ——. Undertaking for appeal by —— —— to gen'l term.

333 MONDAY, *November* 9, 1885.

The court resumes its session pursuant to adjournment.

Present: Chief Justice Cartter and Justice- James and Merrick, holding a general term.

Decree in General Term & Appeal to S. C. U. S. Filed Nov. 9, 1885.

In the Supreme Court of the District of Columbia. In Equity.

JESSE B. WILSON, Receiver, Plaintiff,
vs.
JAMES B. EDMONDS, Defendant. } No. 9245.

This cause came on to be heard on the appeal taken by the plaintiff from the decree passed herein at a special term in equity on the 22d day of June, 1885. After argument by counsel and upon due consideration it is ordered, adjudged, and decreed by this court sitting in general term this 9th day of November, 1885, that said decree dismissing the complainant's bill be, and the same is hereby, affirmed with costs; and from this decree the complainant prays an appeal to the Supreme Court of the United States, which is allowed in open court, and the penalty of the appeal bond is hereby fixed at $1,000.

By the court:

CHAS. P. JAMES, *J.*

334 Filed Dec. 7, 1885. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia, the — Day of ——, 188–.

JESSE B. WILSON, Receiver, &c.,
vs.
JAMES B. EDMONDS. } No. 9245.

In error.

Know all men by these presents that we, Jesse B. Wilson, receiver, and Samuel H. Walker are bound unto the above-named James B. Edmonds in the sum of one thousand dollars, to be paid to the said James B. Edmonds, his executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this — day of ——, 188–.

Whereas the above-named Jesse B. Wilson, receiver, &c., has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Jesse B. Wilson, receiver, &c., shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JESSE B. WILSON. [SEAL.]
SAM'L H. WALKER. [SEAL.]

Sealed and delivered in presence of—

—— ——.

Approved this 7th day of Dec., 1885.

D. K. CARTTER, *Ch'f Just.*

335 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 20th day of March, 1886.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by *D. K. Cartter,* clerk of the said court, to be in due form.

Witness my hand and seal this 10th day of March, 1886.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 20th day of March, 1886.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS,
Assistant Clerk.

Endorsed on cover: Dist. of Columbia supreme court. No. 245. Jesse B. Wilson, receiver of J. H. Squier & Company, appellant, *vs.* James B. Edmonds. Filed April 3, 1886.

a IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1888.

JESSE B. WILSON, Receiver of J. H. Squier & Co., Appellant,
vs.
JAMES B. EDMONDS. } No. 245.

It is hereby stipulated and agreed that the record in the above-entitled case may be amended and completed by inserting after the words W. H. S. No. 3 and in the place of what is printed as Exhibit W. H. S. No. 3, on page 31, line 25, the words and figures following:

Gold, Government, railroad, and corporation bonds bought and sold at market rates; six per cent. interest paid on deposits; payable on demand; special rates on time deposits; interest paid or credited January and July; pay of officers in the army cashed in advance; navy allotments purchased; drafts on New York given and taken at par; letters of credit to travelers in Europe issued; collections made everywhere.

Banking-house of J. H. Squier & Co., No. 1416 Pennsylvania avenue.

WASHINGTON, D. C., *Oct.* 28, 1880.

James B. Edwards, Esq.:

DEAR SIR: Please call to-day and exchange some vouchers.

Very truly, J. H. SQUIER & CO.

Exhibit W. H. S. No. 3.

b And by inserting on page 122 the report of the auditor referred to in the stipulation set forth in said page as follows:

1 In the Supreme Court of the District of Columbia.

THERON C. CRAWFORD *et al.*
vs.
J. H. SQUIER *et al.* } No. 9051, Equity Docket 24.

Report of Auditor.

This cause is referred to the auditor to take an account of the indebtedness of the said J. H. Squier & Co. or of the said J. H. Squier to such creditors as shall claim the benefit of the proceedings in this suit and to make report thereof to the court, with direction to the auditor to give reasonable notice to such creditors as have appeared in the cause, and by publication of 10 days, in a newspaper published in this city, of the time and place of the taking of such account and of the object thereof.

In execution of this order of reference I caused to be published in the Evening Star newspaper, in this city, for a period of 10 days, notice of the time and place of the said accounting, and also, procuring from the books and records of the said firm of J. H. Squier & Co. the names of all parties having dealings with the said firm so far as the said books and records disclosed the same, I sent to each of the said parties additional notice of the time and place of the said accounting and the object thereof.

The hearings in this reference have been continued from time to time to accommodate creditors who were non-residents of this District, who, from other causes, were delayed in presenting their claims.

2 For reasons hereinafter appearing I have stated separate accounts of the indebtedness of the said firm to depositors and other creditors who have not been allowed and do not claim interest upon their said accounts at a rate exceeding 6 per cent. per annum and of those who have been credited upon the books or who claim an allowance of interest at a rate exceeding 6 per cent. per annum.

In Schedule A I have stated an account of the depositors being within the class first above named, and in Schedule B an account of the depositors of the second class above named.

Some of the depositors failed to appear in the course of this reference or to present their claims in any manner, and in these cases the condition of the account and the amount due and owing have been ascertained from the books and records of the late firm. The account of indebtedness to depositors, as stated in Schedule A, is made up to the 1st of June, 1884, as are all of the claims included in this report.

In Schedule B it will appear that the depositors therein named have claimed, and, in some instances, received, interest upon their deposits at the various rates of 7, 8, 10, 12, and 15 per cent. per annum. Upon examination of the books of the depositors and the books of the firm, I find entries of agreements as being made or existing between the firm and the depositor for the allowance of these several rates in interest in such form as to amount, I think, to such a written agreement as is required by the statute.

For this reason I have allowed interest upon the balances of the depositors as claimed in all cases where the rate so claimed does not exceed 10 per cent.

3 There remain other classes of depositors—one claiming 12 per cent. per annum and the others 15 per cent. per annum. Objection is made that these cases come within the scope of the law in force in this District, as contained in section 715 of the Revised Statutes of the United States relating to the District of Columbia, and which provides that "if any person or corporation shall contract to receive a greater rate of interest than 10 per cent. upon any contract in writing he shall forfeit the whole of the interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation."

In a number of instances the parties under these contracts to re

ceive 12 per cent. per annum have from time to time been paid the interest as it accrued, or the same being credited to them upon the books, has afterwards been withdrawn as interest upon the principal, and the interest so paid could only be recovered by suit under the provisions of section 716 of the said Revised Statutes.

The remaining cases the interest at the rate named has been from time to time credited in the account of the depositor and added to the principal, and interest again calculated and credited upon such principal and in the same manner, so that the unlawful interest has entered into and formed a part of the fund to the depositor's credit upon the books of the bank and of the balance of such credit now remaining and claimed by the depositor.

The main question or difficulty in applying the law to these cases is, How far back can the accounts be traced for the purpose
4 of excluding these allowances of unlawful interest? It seems to me that there is practically no limit; that the balance now claimed, being made up of credits and additions of unlawful interest, such credits and additions, whether within one year or ten, must be excluded and the account of the depositor confined to moneys deposited to his credit as principal. Applying this theory as a rule, it will appear that in several instances the balance claimed by the depositor is entirely wiped out, the whole balance so claimed being the result of credits of unlawful interest.

In one instance in this schedule a balance appears to be due to one Ellen E. H. Sheldon. An examination shows that about 1876 a small balance appeared to be due her upon the books of the late firm, but with a memorandum in the margin to the effect that Mr. Squier believed this account to have been paid.

The depositor in question did not appear and made no claim in this reference, and from the lapse of time the presumption of payment or settlement is so strong that I have excluded this claim in my allowances.

Mr. John Evans, a depositor who claimed a balance due to him of $12,780.35, is more largely interested in the question of the effect of the unlawful interest than any other depositor or claimant, and special hearing was given to him upon this point.

It appears in evidence that many years ago Mr. Evans and the firm of Squier & Co. made a contract whereby the former was to be allowed interest at the rate of 15 per cent. per annum in consideration of giving certain notice (as to time) of his intention to withdraw his
5 deposit; that this interest, monthly as it accrued, was credited to this depositor, thus entering into his account and being in its turn also the subject of interest at the said rate. It further appears that these credits of interest, traced back to the year 1876, completely extinguish the balance now claimed as due, and under the rule and my construction of it, as above stated, I have to report that there is nothing due to Mr. Evans.

In Schedule C I have stated an account of the outstanding notes of J. H. Squier & Co. and the amounts due upon the same as principal; also such miscellaneous claims as have been presented and established.

By reference to the record of the proceedings in this reference under date of January 8, 1885, it will appear that Dr. John B. Herding, who presented six notes of J. H. Squier and J. H. Squier & Co., declined to answer certain questions propounded to him by the solicitor for the receiver. These notes are included in Schedule C as representing indebtedness of the late firm for the reason that they were sufficiently identified, and there do not appear to have been any payments made on account of either of the existing notes of principal or interest.

Some of these notes may be renewals of other notes, and in such renewals interest at a greater rate than that permitted by law may have been calculated and added. Upon this point the witness declined to answer; and his testimony is submitted for such action in the premises as may seem proper to the court.

6 Miss Mary A. Nevens, through her solicitor, presents 3 notes, of which copies are filed and submitted in this report. These notes, stated in their order, are as follows:

Note of July 1, 1881, for $5,000, payable one year after date to the order of Mary A. Nevens, with interest at 10 per cent. per annum until paid.

Note of July 29, 1881, for $1,000, payable on the 1st of July, 1883, to the order of Mary A. Nevens, with interest at 10 per cent.

Each of these notes contains the following endorsement: "Note of $6,000, endorsed by S. K. Schwank, filed as collateral."

Note of July 2, 1883, for $10,000, payable two years after date to the order of Samuel K. Schwank, with interest until paid, and endorsed "Samuel K. Schwank."

The note of $6,000, delivered as collateral for the first two named notes, is not produced and is said not to be now in the possession of Mrs. Nevens. This claimant did not appear in this reference, it being stated by her counsel that her condition of health was such as to forbid her appearing or testifying in the matter.

It will be observed that the first two named notes matured on or about the 1st of July, 1883, and on the 2d of July, 1883, the third and larger note was made and delivered. It is probable that the former notes were merged in the latter. Whether this be true or not, until the collateral note of $6,000 is produced or sufficiently accounted for I do not feel authorized to include the two first notes of $1,000 and $5,000, respectively, as among the existing indebtedness of the firm.

In Schedule D I have stated a resumé of the various classes of indebtedness as enumerated in the three preceding schedules.

JAS. G. PAYNE, *Auditor.*

7 SCHEDULE A.

Account of the Indebtedness of J. H. Squier & Co. to Depositors to whom Interest Allowed upon their Deposits did not exceed six per cent. per annum, stated as of June 1st, 1884.

Brown, Henry	1 00
Ball, R. H.	1 00
Bowser, Mary Ellen	20 00
Bowser, Sarah	25 00
Beans, Isaac N.	107 54
Bryson, Lottie	13 34
Berger, A.	251 25
Bryant, J. H.	101 06
Baily, Jno. T.	20 00
Buchanan, F. S.	3 00
Carter, John	2 00
Chase, Sallie	12 31
Champe, Winnie	13 00
Cummings, E. S., Mrs.	5 25
Crawford, F. C.	239 66
Collier, Peter	262 39
Claxton, John	30 60
Crawford, T. C.	1,957 72
Cleveland, J. D. G.	5 06
Crawford, F. G.	25 31
Dunne, Michael	80 58
Dante, Frank B.	20 00
Dante, Frank B.	30 65
8 Dunlap, Henry	21 70
Evans, S.	208 69
Edelin, Lillie A.	94 27
Evans, R. H.	154 68
Erich, Henry C.	9 81
Falk, Louise	315 00
Fairman, Chas. F.	99
Farnham, E. D.	5 00
Fairman, Mary I.	15 97
Gould, Jas. B.	351 50
Graydon, W. M.	122 45
Gould, W. W.	131 25
Gould, W. W.	153 00
Gleason, E. P.	90 17
Haden, A. D.	10 17
Hyatt, M. J.	849 82
Humphreys, Kate	10 00
Hodgkiss, Chas., trustee for Willie Hotchkiss	5 90
Helmsen, H. H., adm'r	4 00
Hutchins, J. G.	25 43
Helm, Bertha H.	2 03
Hillman, Myra T.	202 00

	Ingalls, Rufus	43
	Joyce, C. P.	589 30
	Joyce, Chas. H.	1,578 65
	Jones, Wm.	22 00
	Johnson, Alonzo T.	80 65
	Joliffe, S. J., Mrs.	100 00
9	Just, J. S.	102 67
	Johnson, Sophia P.	826 92
	King, Benj. F.	1 02
	Kimball, J. H.	213 35
	Kirkman, J. L., Lt.	1 34
	Kehoe, W. J.	100 00
	Luther, C. P., Mrs.	603 50
	Madison, B. W.	41
	Madison, B. W.	1 01
	Miles, A. Jennie	90 00
	Moore, Chas. W. H.	55 46
	Merriman, A. L.	108 95
	Mitchell, F. W.	842 25
	Mitchell, F. W.	60 00
	Mathewson, H. J., Miss	131 55
	Mathewson & Simonds	157 09
	Manning, Joseph	75 47
	Mathew, Jas. Henry	19 03
	Pollard, Geo.	13 00
	Pratt, Arthur	30 50
	Paterson, D. C.	1 80
	Pierce, J. R.	1 66
	Phillips, A. L.	421 60
	Powers, F. P.	359 71
	Pond, W. G.	20 25
	Robison, R. W., Mrs.	810 95
	Robinson, Wm. B.	79 83
10	Ryan, James	1 35
	Robbins, N. A.	52 33
	Ruttledge, Thos.	470 62
	Strait, N. A.	214 56
	Snowden, G. A.	50
	Shaw, Jno. H.	25
	Stewart, Thomas J.	206 50
	Soule, L. C., Mrs.	82 90
	Thompson, Mary E.	5 00
	Trout, Jno. F.	28 04
	Tyler, Chas. C.	341 23
	Thacher, Sarah A.	100 00
	Webster, Jno. G.	257 15
	Williams, H. E.	45 95
	Wiley, Aldrich C.	1 00
	Whelan, Mary C.	204 84
	Wilkinson, A. G.	33 68
	Wagner, A. K.	188 82

Young, Augusta N.		652 17
Young, Edward		717 01

JAS. G. PAYNE.

11 SCHEDULE B.

Account of the Indebtedness of J. H. Squier & Co. to Depositors to whom Interest Allowed upon their Deposits exceeds six per cent. per annum, stated as of June 1, 1884, showing Balances Claimed and Allowed.

	Amount claimed.	Amount allowed.
7 per cent.:		
Roler, J. O.	1,842 02	1,842 02
8 per cent.:		
Adams, Adolphus	154 66	154 66
Bruggerman, Herman	2,023 05	2,023 05
Boyer, S. S., Dr.	103 04	103 04
Cook, Charlotte	408 31	408 31
Evans, Virginia M.	12 08	12 08
Edgecombe, Sarah A.	934 00	934 00
Gleason, Mary	1,016 65	1,016 65
McKee, Mary S.	158 80	158 80
Mattoon, Maria W.	194 71	194 71
Piles, Sarah	172 65	172 65
Parsons, W. L.	107 54	107 54
Smith, Wm. T.	148 59	148 59
Tyler, Eliza B.	241 20	241 20
10 per cent.:		
Hutchins, J. G.	283 10	283 10
Young, Augusta M.	610 00	610 00
12 per cent.:		
Dixon, Annie H.	280 58	254 00
12 Gordon, Emily A.	748 46	748 46
Giddings, S. P.	4,285 00	4,285 00
Haskell, L. P.	480 35	235 77
Hampson, Martha R.	221 20	150 00
Hotchkiss, S. C.	3,523 75	0,000 00
Holton, J. M.	1,999 52	1,865 67
Holton, F. A.	996 69	930 00
Hotchkiss, Helen M.	335 15	000 00
Kimball, Julia	570 00	500 00
Lewis, L. A.	1,249 60	1,249 60
Nevens, Mary A.	4,630 00	4,630 00
Parnell, R. M.	5,525 00	5,525 00
Rogers, Henry	4,120 00	4,000 00
Reese, Ella	150 00	150 00
Shelden, Ellen H.	116 02	000 00
Smith, Wealthy A.	34 20	27 00

	Amount claimed.	Amount allowed.
Smith, Jay B.	1,506 64	1,506 64
Smith, F. E., Mrs.	343 81	343 81
Smith, A. R.	912 95	912 95
Walker, Susan	2,150 00	2,150 00
15 per cent.:		
Evans, John	12,780 35	00,000 00

JAS. G. PAYNE, *Auditor.*

13 SCHEDULE C.

Account of Indebtedness of J. H. Squier & Co. on Promissory Notes and Claims of a Miscellaneous Character.

To John B. Harding:

Note	April	12,	1884,	at 60 days	$700 00	
"	"	17,	"	"	600 00	
"	"	17,	"	3 months	1,000 00	
"	"	28,	"	"	1,000 00	
"	May	2d,	"	"	1,000 00	
"	"	30,	"	90 days	850	
Total						$5,150 00

All these notes are payable with interest at the rate of 10 per centum per annum after maturity. (See report as to this claim.)

A. G. Wilkinson:

Note of J. H. Squier, Jan'y 19, 1876, at 1 year	2,000 00	
Interest paid on this to June 1, 1884; note bears 10 per cent. per annum.		
Note of J. H. Squier, Jan'y 7, 1884, on demand after 3 months (no demand made)	1,000 00	
		3,000 00

14 A. M. Wooster:

Note of J. H. Squier & Co., May 20, 1884, on demand, after 30 days' notice, with interest at 10 per cent. per annum	500 00

M. A. Lathrop:

Note Jan'y 6, 1883, at 4 months, with interest; interest paid May 6, 1884	400 00

George N. Brewer:

Note, including 7 months' interest added to face of note	2,115 00

George C. Round:

Note March 18, 1881, on demand after 60 days, with interest at 8 per cent. (interest paid March 1, 1884)	500 00

Edward Temple:			
Note April 30, 1884, due July 1, 1884 (with interest at 6 per cent.)			300 00
			11,965 00
15 To Horace C. Henry:			
Note February 1, 1877, with 6 per cent. interest; interest paid to June 1, 1884; balance of principal			700 00
D. C. Patterson:			
Note Nov. 19, 1883, 60 days after demand		1,000 00	
Note July 2, 1884, on demand, after 30 days' notice		100 00	
Note Jan'y 2, 1884, 6 months		100 00	
			1,200 00
These notes bear interest until paid, at 10 per cent.; interest paid to May 1, 1884.			
George C. Cornish:			
Note June 1, 1883, at 3 months		500 00	
Do. do. do.		1,000 00	
Do. do. do.		1,000 00	
			2,500 00
The above notes are payable with interest at 10 per cent. per annum; interest is paid to June 1, 1884.			
Mary A. Nevens:			
Note July 2, 1883, at 2 years, with interest			10,000 00
Total of notes			$26,665 00
William King & Sons:			
Account			109 36

JAS. G. PAYNE, *Auditor.*

16 SCHEDULE D.

Resumé of Indebtedness.

To depositors enumerated in Schedule A		17,115 72
depositors enumerated in Schedule B, 7 per cent.		1,842 02
Do. 8 per cent.		5,675 28
Do. 10 per cent.		893 10
Do. 12 per cent.		20,463 90
To holders of promissory notes, as per Schedule C		26,365 00
Open accounts, Schedule C		109 36
Total		$81,464 38

JAS. G. PAYNE, *Auditor.*

W. WILLOUGHBY,
Sol. for Appellant.
NATH'L WILSON,
Sol. for Appellee.

17 [Endorsed:] No. 245. Jesse B. Wilson, rec'r, &c., *vs.* Jas. B. Edmonds. Stipulation for amendment & completion of record.

[Endorsed further:] Supreme Court U. S. 1888, October term. No. 245. Jesse B. Wilson, receiver of J. H. Squier & Co., app't, *vs.* Jas. B. Edmonds. Stipulation of counsel and addition to record. [Stamped:] Office Supreme Court U. S. Filed Mar. 1, 1889. James H. McKenney, clerk.

41
1 01
90 00
55 46
08 95
12 25
0 00
1 55
7 09
47

Supreme Court of the United States.

No. 245.

JESSE B. WILSON, Receiver, &c., Appellant,

vs.

JAMES B. EDMONDS, Appellee.

Brief of Counsel for Appellant.

W. WILLOUGHBY,
Counsel for Appellant.

WM. H. MOORE, PRINT., 511 ELEVENTH ST. N. W.

Supreme Court of the United States.

JESSE B. WILSON, RECEIVER, &c., *Appellant*,
vs.
JAMES B. EDMONDS, *Appellee*.
} No. 245.

Brief of Counsel for Appellant.

This case comes before this Court upon an appeal from a decree of the Supreme Court of the District of Columbia.

The bill was filed, by leave of the Court, by complainant, as Receiver of the Estate of J. H. Squier & Co., who had been doing business in the District of Columbia, and had become insolvent. The bill is on behalf of the creditors of the estate, amounting to over $80,000; charging the defendant, among other things, with having been a partner of said Squier, as to such creditors, and, therefore, chargeable as such for the payment of the debts of the firm.

The defendant denies that he was a partner, but alleges that he advanced to said Squier, at different times, between April 1st, 1879, and March 2nd, 1882, sums of money, simply as a loan, in all, $47,000 or $48,000, upon which he was to have interest at 10 per cent. per annum, and that said Squier is his debtor.

The leading issue of fact presented by the pleadings and proofs is, whether the different sums of money, amounting, in all, to $44,000, as the proofs show, were an investment with Squier, upon which there was to be a sharing of profits, or whether such sums were a simple loan to Squier, by Edmonds, at an agreed interest of 10 per cent. per annum.

The court below, on consideration of the proofs, held that Edmonds was not a partner, and dismissed the bill.

Assignment of Errors.

1st. The court below erred in finding that the defendant was not a partner with said Squier & Co., and, as such, liable to be charged with the payment of the debts of the firm.

2nd. The court erred in its conclusions of fact, from the proofs in the cause.

3rd. The court erred in its conclusions of law, from the facts proved in the cause.

4th. The court erred in dismissing the bill of complainant.

Statement of Facts.

The following agreements are proved to have existed between the said Edmonds and said Squier, to wit:

"This agreement witnesseth, that Jas. B. Edmonds has delivered thirty-four thousand dollars to J. H. Squier for investment by the latter *for the former* in the purchase of pay-vouchers, payable within six months from the date of purchase, of officers in army, navy, and civil service of the United States, no longer, however, than such investments will yield a monthly profit of two per cent. or more.

"Said Edmonds shall keep possession of such vouchers to an amount equal to the sum so invested and two per cent. more, and for that purpose may keep his own safe in said Squier's banking-house free of charge, and said Edmunds *out of the profits* shall receive one and one-half per centum at the end of each month on the sum invested, and said Squier shall *enjoy the rest of the profits.*

"Said Squier guarantees the genuineness of each voucher that may be delivered and its payment by the Government, and the return to said Edmonds of said principal sum, *over and above the said profits,* upon the termination of this contract on said investment.

"Said Squier shall transact all the business and shall receive vouchers for collection, as they mature, upon delivering others similar in kind and amount, and payment to said Edmonds his said share of profits at the end of each month from this date, and in case of default in such payment or delivery of other vouchers said Emonds may collect same.

"Either party may, upon three months' notice of such desire, terminate his contract, and thereupon all moneys so invested

shall be repaid to said Edmonds, besides his said portion of profits to date of payment by said Squier, and upon such payment any remaining vouchers shall become the property of said Squier and be delivered to him.

"Should said Squier die, further investments hereunder shall cease. If said Edmonds shall die, his wife surviving him shall be entitled in her own right to all moneys due on this contract, and she shall be thereby subrogated to his rights herein; and as a further guaranty of such investment and indemnity against loss, said Squier makes his promissory note to said Edmonds of this date.

"Witness our hands at Washington, D. C., this 1st day of tember, 1880.

"J H SQUIER.
"JAS. B. EDMONDS."

Done in duplicate.

The following agreement was made August 1, 1883, to wit:

"This agreement witnesseth, that Jas. B. Edmonds has delivered to J. H. Squier & Co. $44,000 for investment by the latter for the former in the purchase of pay vouchers, payable not later than six months from date of purchase, of officers in army, navy, or civil service of the United States, and for reinvestment upon collection by said Squier in same kind of securities, but not unless they are purchased so as to yield said Edmonds a net profit of one and one-fourth per cent. per month on $40,000, and one per cent. per month on the $4,000, and enough besides to pay Squier & Co. for their services and for guaranteeing prompt payment of the vouchers.

"Said Squier & Co. guarantee the genuineness of each voucher as well as its prompt payment and the return to said Edmonds of said principal sum of $44,000, over and above said profits, and may retain all profits and interest above those going to said Edmonds as aforesaid.

"Said Squier & Co. shall transact all the business without charge. Said Edmonds shall keep possession of the vouchers to the extent of the principal invested and 2 per cent. besides, and will exchange as they become payable for others of like kind or for cash.

"He may keep his safe in banking-house of said Squier free of charge. Said Squier & Co. give their notes to said Edmonds for said $44,000 and interest at 10 per cent., to wit, one for $40,000 and one for $4,000, of same date as this memorandum, and as a further guaranty and indemnity to Edmonds.

"This contract shall terminate upon notice by either party or upon death of either, and then all moneys so invested shall be

returned to said Edmonds, with interest to said extent aforesaid, and in case of death of said Edmonds the money shall be paid to his present wife, if she survives him.

"All moneys that may be collected by said Edmonds on said vouchers and *received*, shall be credited to said Squier on said notes.

"Witness our hands this 1st day of August, 1883, at Washington, D. C. Words "said Edmonds" above erased before execution, and "interest at 10 per cent. on said notes" added.

"J. H. SQUIER.
"J. B. EDMONDS."

It is further shown by the books of Mr. Squire and by the testimony of Jay B. Smith, his clerk throughout nearly the period covered by these investments and thoroughly familiar with his business, (pp. 55, 71,) that at no time did the available capital invested in the business, including the amounts of moneys received from Edmonds from time to time, exceed such amounts. That such moneys constituted nearly the entire capital of the business throughout; that the business represented by these written agreements constituted nearly all of the business done by said Squier, (pp. 70, 75;) *that no distinction was in fact made between vouchers purchased with this money and the money coming to the hands of Squier from other parties;* and that the money of the present creditors of Squier was used to purchase the identical vouchers that went periodically into the hands of Edmonds, (p. 71,) so that at the end Edmonds claimed every one, without exception. The evidence further shows that the business was a losing one; that gradually the amount in value of the vouchers became reduced, so that there were not enough to make up the amount called for, there being less than $35,000 face value at the time of the failure, June 7, 1884, and the real value much less, (p. 71,) Edmonds, however, having received his share by way of profits or dividends $29,050.65. (P. 58.)

The defendant claims that the writing of Sept. 1, 1880, does not represent the real agreement which existed between Squier and himself. He says that he does not know what Squire meant when in his books he applies the word "dividends" to the monthly payments. He says that they had settlements from time to time,

and the notes given represented the true amounts then due, after accounting for the sums received, and reckoning interest at ten per cent. per annum.

But the facts of this case will establish mathematically that his claims are unfounded, and that such writing of Sept. 1, 1880, did represent the true agreement between them. This agreement was written and signed by both parties and was in the possession of Squier. Mr. Squier died before the depositions were taken, and his evidence, of course, could not be had, but the books show the following:

The first check of Edmonds is for $2,000, April 2, 1879, (pp. 56, 60) This appears upon the book of Squier, of the same date as follows: "To cash, on agreement, $2,000," (p. 38.) Under date of May 3, 1879, is found in the book: "By div. for April, $25." (P. 38.) This is 1¼ per cent. on the advance of $2,000. Edmonds admits that he received this $25.

The next advance, as shown by both check and book, is May 3, 1879, $2,000. (Pp. 57, 60.) The next credit appears thus: "June 5th, by int. on $4,000 for May, $50." (P. 38.) The next credit is as follows: "July 3, by int. on $4,000 for June, $50." (P. 38.) Now, Edmonds gives a receipt for this in the following terms:

"WASHINGTON, D. C., *July* 1, '79.

"Received of J. H. Squier *profits* for June, '79 on the $4,000 investment, $50.

"J. B. EDMONDS."

(P. 100.)

The next credits on the book are: "Aug. 1, by int. on $4,000 to Aug. 1st, $50." Sept. 2, "by int. for Aug. dept. at Riggs, $50." Oct. 4, "by *div.* for Sept., $50." This is receipted for by Edmonds in the following terms:

"WASHINGTON, D. C., *Oct.* 5, '79.

"Rec'd of J. H. Squier & Co. fifty dollars *dividend* on $4,000 investment for month of September last.

"J. B. EDMONDS."

(P. 100.)

The book shows that on Oct. 4th another advance was made of $3,000, appearing therein as follows: "To cash on agreement,

$3,000," and the credits immediately following show monthly receipts, described sometimes as *int.* and sometimes as *div.*, of 1¼ per cent. of the entire sum advanced.

The account of advances and monthly receipts, as shown by the checks and the book from the beginning, Apr. 3, 1879, to the end of May 31st, 1884, show an exact correspondence at the end of every month without a single exception of monthly profits on the sums advanced at the date of each monthly receipt at the rate of either 1¼ per cent. per month or 1½ per cent., except during a portion of the time there is a profit of one per cent. on a small part.

For example, the dividend paid at the beginning of Nov., 1879, shows a receipt of 1½ per cent. on the sums then in hand.

There appears to have been on hand Nov. 1, $12,000, and Dec. 2d was paid $180, being one and one-half per cent. On Feb'y 3, 1880, Squier paid Edmonds $300, which is just one and one-half per cent. on the amount of money on hand during the month of Jan'y, 1880. On May 1, 1880, the total advances were $30,000, and June 1, 1880, was paid $450, being 1½ per cent. This rate of 1½ per cent. per month is kept up through the years 1880 and 1881, except Dec. 31st was paid 1¼ per cent. on $40,000 and one per cent. on $2,000, the total advances then being $42,000. This rate was kept up until Edmonds, having advanced $2,000 more March 2, 1882, on the 31st of March, 1882, received $540, being 1¼ per cent. on $40,000 and one per cent. on $4,000, and from that date until May 31st, 1884, one week prior to the assignment, he received regularly each month this sum, $540.

These monthly receipts are admitted. All except those prior to Dec. 30th, 1880, are shown by checks of Squier. Prior to that time these payments appear on the book in various ways; sometimes described as "int." for the preceding month, sometimes as "credit on agreement," and once as "Cr. on note."

The aggregate amount and such credits correspond with the aggregate amount admitted by the answer.

On the 1st of Nov., 1880, Edmonds gives a receipt in the following form: "Rec'd of J. H. Squier *all dividends* due at this date," and subsequently to this are found receipts in similar

form of the dates of Dec. 30, 1880; May 2, 1881; June 1st, 1881, and July 1st, 1881, in each one of which he uses the word "dividends" to express what he received. (Pp. 100–101.)

Mr. Edmonds says that every time he made an advance to Squier he took his note, bearing interest at ten per cent.; that at intervals these notes were surrendered, and notes given for the several amounts due at such intervals. For illustration, at one time a note for $16,000, at another for $34,000, and finally one of $40,000 and one of $4,000, making $44,000 then payable. He claims that Squier was entitled to have credited on these notes whatever sums were paid in excess of the interest due at the time of payment, but he admits that no such application was in fact ever made upon any one of such notes, and the notes now held by him of $44,000 do not show any application or endorsement whatever.

Now, that no such application was ever intended by either of the parties, is shown also by the following undisputed facts:

On the 1st day of September, 1880, a note was given for $34,000, (p. 25,) which represents precisely the amount of advances then shown to have been made by the checks and the book. (P. 60.) At that time, however, there had actually been received by Edmonds $4,269.40, in monthly payments, as before described, while the interest, at ten per cent., was only $2,404.28. This shows that the whole amount of $34,000 was exacted, and no account was taken of these amounts received over and above the interest, which excess was $1,865.12.

They had simply been received as *profits* and *dividends*, and no account was taken of interest.

Now, on March 3d, 1882, the amount advanced, as shown by the book and checks, was $44,000, and August 1, 1883, notes were taken for precisely this sum. (P. 21.) But, in the meantime, however, between September 1, 1880, and this date, there had been advanced sums amounting to precisely the $10,000. On September 1, 1880, a note was given for $34,000. March 3d, 1882, $10,000 having been further advanced, the note was $44.000. But, in the meantime, the aggregate amount of the monthly payments was $10,201.25. The interest on the sums advanced during this period would have been, as shown by calculation, at ten per cent. per annum, $5,853.68.

There does not appear to have been any deduction on account of the excess of the monthly payments over the interest, as claimed, but notes were exacted for the whole sum of $44,000, without any deduction whatever for the difference, $4,347.57.

Again: August 1st, 1883, an agreement is made in writing and new notes given for the precise sum advanced, $44,000, there having been no further advance made after March 3d, 1882, and the amount of the notes being precisely the same. (P. 21.)

But, in the meantime, there had been received in these monthly payments the sum of $9,180, while interest, at ten per cent. per annum, would have been $6,232.26. Certainly there was no application of the excess of receipts above the interest of $2,947.74.

The total amount paid Edmonds, from August 1st, 1883, to June 1st, 1884, was $5,400. (P. 58.) The interest, at ten per cent. per annum, would have been $3,666.67; a difference of $1,733.33. The total amount of dividends received by Edmonds was $29,050.65, the interest on the advances would have amounted to $18,156.89, making a difference of $10,893.76. In making these calculations of interest no deduction was made on account of any principal being reduced by application of any profits to such principal.

These acts demonstrate, to a mathematical certainty, what were the operations of the minds of the parties performing such acts. In the face of these acts, it is idle for the defendant to claim that it was understood between him and Squier that the money was a simple loan, bearing interest at ten per cent. per annum.

That this agreement of September, 1880, represented the understanding of the parties at the time, is further shown by the following facts:

The dividends paid for the months of July and August just preceding was, each month, $495, being 1½ per cent. per month on $33,000, the amount then advanced. On August 31, 1880, the day before this agreement, there was another $1,000 advanced, making the $34,000 named in the agreement. (Pp. 38, 51.)

The very next payment after this, October 1st, is $510, being 1½ per cent., precisely as the agreement prescribes. This is continued monthly until there is another advance, when the payment increases in precisely the same proportion. After this there are eight advances in different sums and at different dates, until

March 2, 1882, when the sum advanced is equal to $44,000, and at each advance up to $40,000 is a corresponding increase of payment monthly at 1½ per cent., in exact accordance with the terms of this agreement, and showing, beyond all power of contradiction, that this agreement was acted upon every month as the true agreement between the parties, and this action was repeated from month to month until 1882. In the latter part of 1881 and March 2d, 1882, were advances amounting to $4,000, upon which the amount of receipts were 1 per cent., the rate then being changed to 1¼ per cent. on $40,000 and 1 per cent. on $4,000.

Again: the written agreement of August 1, 1883, by Edmonds is almost identical with that of September 1st, 1880, except that it recites notes of $44,000, instead of $34,000, and instead of providing that the "profits" shall be at the rate of 1½ per cent. per month, it is that they shall be 1¼ on $40,000 and 1 per cent. on $4,000. The fact that the agreement of September 1. 1880, was thus substantially rewritten by Edmonds August 1, 1883, strongly confirms the validity of the first agreement. The important phrases bearing upon the questions at issue are very nearly the same. In the agreement of 1880 said Squier guarantees "the return to said Edmonds of said principal sum over and above the said *profits* upon the termination of this contract on said investment." In this agreement he also says, at the termination of the contract, "thereupon all moneys so invested shall be repaid to said Edmonds, besides his said portion of profits to date of payment."

The legal effect and tenor of both instruments are identical as to the amount of the notes and the per cent. of profits. Thus, these two instruments—that of 1880 and that of 1883—taken in connection with the uninterrupted acts of the parties, in complete harmony with them throughout, prove each other, and show conclusively that they represent the true relations of these parties to each other and to their creditors, whose money has been obtained for the benefit of both parties in carrying out their joint enterprise, in which Edmunds put in his capital and Squier his business facilities, skill, and experience, the profits of which they were to share as the agreements provide.

We are, therefore, brought to the inevitable conclusion that prior to Aug. 1, 1880, the true relations of Edmonds and Squier are to be determined by the agreement dated Sept. 1, 1880, and subsequent to that time by the one dated Aug. 1, 1883.

Mr. Edmunds claims that he knew nothing of the business of Squier. (P. 16.) But here is pretty conclusive evidence that he did. He says that Aug. 1, 1883, he had in his own hands the amount of vouchers called for by the agreement of that date, about $45,000, (p. 19,) but ten months later he has in hand less than $35,000 face value, and actual value much less—not over $25,000. (P. 6.) Now, can it be explained that there should have been such a reduction—a thousand dollars a month—of the vouchers in his own hands, and he know nothing of the business of Squier and make no inquiry? Surely he is not the man to allow his securities to be reduced to $10,000 less than his claim, and he at the same time be innocent of all knowledge of the business or ability of said Squier. Let the counsel for defendant explain this according to any known law of human nature, if he can. The only possible explanation is that he knew all about it, knew that it was a losing business, but could not help it, exacting his share of profits at the end of every month, and perhaps hoping that Squier could in some way get money from some one else to help him through. The actual fact is, as shown by the testimony of Smith and the books—Squier did not have $45,000 worth of vouchers on August 1, 1883, (p. 70;) that it was a losing business before that, and Edmunds then knew it, but, having his money in the business, he did the best he could. With the value of the securities dwindling in his own hands to this enormous extent he could not have been ignorant of the desperate condition of the business. His explanation that Squier was entitled to a reduction of $4,160 upon the principal debt June 1, 1884, is not satisfactory.

The question, then, before us is whether these papers, in connection with the facts that Edmonds' investments represented nearly all the capital on hand and nearly all the business done, and was not kept separately from any other capital, or designed so to be, and that other moneys obtained and debts in-

curred were for the common benefit of both parties, as the proofs show and as hereinbefore stated, all together constitute the relation of partnership as to the creditors of J. H. Squier & Co.

This is the question for the court, to be determined by the law.

Argument and Authorities.

There are three criteria of partnership, either one of which has been held by the authorities, text-books, and writers upon the subject as a sufficient test, namely, sharing of profits, principle of agency, and benefit to each party. An analysis of the agreements applied to the established facts will show the concurrence of all three of these in the relations between Edmonds and Squier.

Let us first consider the agreement of Sept. 1, 1880. By this it appears that Squier is entrusted with $34,000 of money belonging to Edmonds, to be invested by Squier *for Edmonds* in the purchase of pay vouchers. Instead of this being, as claimed, a simple loan to Squier, it directs and controls entirely the mode and manner of the investment. This is for the benefit of Edmonds. The vouchers, when purchased, are the *property* of Edmonds. He so testifies and answers. They were to be *his* exclusively. Now, this investment was to be so made that he could make a profit on them of 1½ per cent. per month. Squier put in his banking facilities, his experience, paid rent of office, clerk hire and other expenses, and for his compensation was to have what he could make over and above this 1½ per cent. per month. It was agreed that no purchases should be made unless they "*yielded a profit*" of 2 per cent. per month, which would give to Squier at least 6 per cent. per annum on the investment. Said Edmonds was to receive his 1½ per cent. "out of the profits." Said Squier was to "enjoy" the rest of the profits.

At the termination Edmonds was to receive "the principal sum *over and above the said profits.*" This is stated twice in the contract. When vouchers became due Edmonds agreed to exchange them (that is, to such extent as he chose, not binding himself to deliver any certain amount) for others similar in price and amount, and payment to Edmonds "his said *share of profits.*"

It will be observed that there is no provision as to *how or out of what money* the vouchers that Squier is to exchange for the vouchers of Edmonds are to be purchased. They cannot be purchased with the money of Edmonds, for that is provided to be already in vouchers. Edmonds has these vouchers himself. He says he had the amount called for by the agreement. If there be some of this money in the hands of Squier, still it does not follow that the vouchers Squier may purchase are purchased with such money. At least there is no provision for this, and the evidence shows that in fact it was not so. *Whatever* money Squier could get went to buy vouchers, to be exchanged by him for Edmonds' vouchers; and thus it happens, as Smith testified, that the vouchers now in the hands of Edmonds were purchased with the money of those who are now creditors of Squier, and this, too, as the natural result of this agreement. The books and the evidence show that the business was confined almost exclusively to dealing in such vouchers; that it has been a constantly losing business for Squier; that it has been a constant struggle with him to provide money to keep up the monthly payment of profits, and also to keep up the amount of vouchers according to the agreement, and that the money he borrowed and the debts he incurred were *for this purpose*. The agreement bound him to do this at whatever cost. He must get the vouchers whenever and however he could, and he must provide his own money to do it, if necessary. There is no provision in the agreement for keeping the vouchers purchased with the $34,000 distinct from vouchers purchased with the money of Squier or with the money that he obtained from depositors or other creditors. And thus it follows naturally, from the terms of the agreement applied to the existing facts, that almost the entire business of Squier was carried on for the benefit of Edmonds as well as for Squier, this agreement being the substantial basis of all the business. This business was to be kept up until the death of one of the parties, subject to a termination by either party upon a notice of three months. This business was, in fact, kept up for a period of over five years—from April 2d, 1879, until June 7th, 1884. That this agreement represented the understanding of the parties throughout, is shown by the testimony. We have been able to produce

eight receipts at different periods, both before and after this agreement, in every one of which Edmonds describes the money received by him as profits or dividends.

Squier gives his note "as a further guaranty of such investment and indemnity against loss," showing that Edmonds does *not* look alone to the proceeds of his investment for his profits and security and return of his money, but to the personal responsibility of Squier as well. This is a demand upon Squier, not merely to return to Edmonds such proceeds and profits, but to make them good out of any money he can get from his depositors or other creditors, or from any source whatever. His investment was not, therefore, a single, isolated transaction, distinct from the other business of Squier, and depending simply upon the results of such transaction, but it entered into the entire business of Squier, permeating it throughout, and making its demands upon the whole as "security" and "indemnity;" and the entire business of Squier, in fact, responded to these inexorable demands, sacrificing to them all it could make and all it could get credit for from others to carry it on.

The agreement of Aug. 1, 1883, under which the last ten months of the business was carried on, is not substantially different as to sharing of profits and other partnership elements.

This speaks of "reinvestment upon collection by said Squier in same kind of securities," provided purchases can be made upon certain terms. How such reinvestment is to be made is by "exchanging them as they become payable for others of like kind or for cash"—that is, Squier is to purchase vouchers with *other* money and exchange them for the vouchers in Edmonds' hands, purchased with his money. The business to be carried on is to obtain vouchers *with other money*, so as to keep up the amount of vouchers provided for by the agreement, and to pay Edmonds his share of profits and to pay Squier his share of profits. The meaning of the last clause is that all moneys collected by Edmonds on vouchers in his hands *and not reinvested* should be credited on the notes. It is the equivalent of the provision in the agreement of 1880, that in case of default in payment or delivery of other vouchers said Edmonds may collect same. This last agreement, like the other, pervades the entire business of Squier, and makes its demands upon the whole.

One of the essential ingredients of the business provided for by the agreements is its continuation and constant repetition. These require a continuation of the business of Squier & Co. He was not at liberty to stop at any time and return his money with simple interest. He was obliged to do business enough to keep up the profits provided for and also to keep the capital at its original amount. He was bound to keep up the expenses of his office, his clerk hire, his banking facilities, his own skilled efforts. This continuation of the business of Squier & Co. was, then, a necessary part of the business provided for by the agreements. Whatever was done for the purpose of keeping up the business of Squier & Co. to the required standard was also done for the purpose of keeping up the business of the agreements, and thus such business shared in the benefit of what was done for or indebtedness incurred by Squier & Co. in furtherance of the business, upon which the business of Edmonds & Co. depended. It was in the struggle to do this that his own business and even his life was sacrificed. He incurred indebtedness *so that* he might keep up his own business in order that he might continue the business of Edmonds & Co., as he was bound by the agreement to do.

The leading case upon the point of sharing profits constituting partnership, as to creditors, was *Waugh* vs. *Carver*, 2 H. and B., 235; 1 Smith's Leading Cases.

At Marg., page 503, Leading Cases, it is thus stated:

"He who takes a moiety of all the profits indefinitely shall, by operation of law, be made liable to losses, if losses occur, upon the principle that by taking a part of the profits he takes from the creditors a part of that fund which is the proper security to them for the payment of their debts."

In Collyer on Partnership, sec. 40, it is said:

"The ground is settled that if a man, as a reward for his labor, chooses to stipulate for an interest in the profits of a business, in that of a certain sum proportional to those profits, he is, as to third persons, a partner.

"A communion of profits implies a communion of loss."

Id., Sec. 18; see, also, Sec's 49 and *n.*, 67, 80.

"Actual partnership, as between a creditor and the dormant partner, is considered by the law to exist where there has been a participation in the profits, although the participant may have expressly stipulated with his associates against all the usual incidents to that relation."

24 How., 542; 5 Peters, 539; 58 N. Y., 272; 13 Gray, 468; 3 H. & J., 505.

In 3 Kent's Com., p. 27, the author says:

"If a person partakes of the profits he is answerable as a partner for losses, on the principle that, by taking a part of the profits, he takes from the creditors a part of the fund which is the proper security for the payment of their debts."

In support of this is cited—

2 Blackstone, 998; 2 H. Black., 247; 16 Vesey, 49; 3 Barn & Ald., 663; 16 John., 40; 16 East., 173.

In 3 Man. & Gra. and Scott's Rep., 32–39, it is said:

"Traders, as to third persons, are partners, if they share the *profits* of the concern, for he who receives a share of the profits receives a part of that fund upon which the creditors have a right to rely for payment."

See, also, 5 Denio, 68–180; Sand. Law. Rep., 57.

"If anyone partakes of the profits, however small his share may be, he is answerable for all the debts of the partnership."

2 H. Black., 235; 4 East., 144; 8 Wall., 222; 22 How., 266.

In *Pleasants* vs. *Fant*, 23 Wall., 120, it is said:

"The right to compel an account of profits in equity is one of the most approved criteria of the existence of a partnership.

"If one furnishes money and the other services and they share profits, they are partners as to third persons."

45 Md., 446; 12 Allen, 544; 1 Cliff, 28; 24 Wis., 331; 18 Wend., 176. See, also, 31 Am. Dec., 376; 12 Conn., 69, S. C.; 30 Am. Dec., 596; 1 A. K. Marsh, 181, S. C.; 10 Am. Dec., 719; 5 Leigh, 583, S. C.; 27 Am. Dec., 618.

In *Parker* vs. *Canfield*, (37 Conn., 250,) decided in 1870, in a most elaborate opinion, the syllabus is:

"If a partner is to receive profits in consideration of furnishing capital, he is clearly a partner, and is a partner as to third per-

sons, even though it should be stipulated that the capital so furnished should be regarded as a loan and the party furnishing it a mere creditor."

See, also, 100 Mass., 430; 114 Mass., 114.

In many cases the question arises whether the person charged as a partner receives profits *as profits;* whether he has a property in or lien upon the profits themselves in distinction from relying only upon the personal responsibility of the other party. But no such question can possibly arise here, for the vouchers purchased are *for Edmonds.* He *owns* the vouchers and all the profits, and takes his profits from them, although he also has the personal responsibility of Squier. He receives his per cent. "out of the profits," and he owns the vouchers out of which the profits arise. This fact will dispose of numerous cases which may be urged on behalf of the defendant's claim.

In 97 Mass., p. 97, decided in 1867, Gray, J., says:

"The rule of law is well settled in this Commonwealth, in accordance with the earlier English authorities, that a person who has not agreed to be a partner nor held himself out as a partner is yet liable as a partner to third persons if by the agreement made, under which the business is carried on, he has an interest in a certain share of the profits as profits and a lien on the whole profits as security for his share."

In *Pratt* vs. *Langdon,* (12 Allen, 544,) it is said:

"The decisive fact is that each had a lien on the stock for his share of the profits."

In *Richardson* vs. *Hughitt,* (76 N. Y., 55,) where one advanced money as a loan and was to have profits as a compensation for the use of his money, it was held that he was not a partner, on the ground that he had not a *property* in the profits themselves. The court distinguishes this case from 37 Conn., 250, and 58 N. Y., 272, on the ground, as stated, that in those cases "the party was to have a *property* in the profits, and not a right of action merely to recover the money loaned."

It was there held, too, that such a loan was not usurious, because there was no certainty that the profits would be sufficient to make it so.

In Parsons on Contracts, 1, (134,) the author says:

"If a third party, who is a creditor of the borrower upon a debt which has arisen in the business in which the money was lent to be used, sues the lender as a partner, on the ground that he took away profits to which the creditors might look for his debt, the lender will be held as such partner, and it is not competent for him to set up his contract as usurious, for he may not rest his defense upon his own wrong."

In 17 Vesey, 405, Summers' ed., was a deed by Lane & Frazer, as follows:

"In consideration of 40,000*l* lent and deposited with us by Boylston, carrying interest at 5 per cent. per annum, for receipt of which we have given him our two bonds for the term of ten years, and we promise and pledge ourselves to unite to the 40,000*l* lent as aforesaid by Boylston 80,000*l*, making a capital of 120,000*l*, all of which to be improved by us, Lane & Frazer, in a line of commerce and business as partners, the same as was followed and pursued by and under the firm of Lane, Son & Frazer, and we do hereby promise to pay to Boylston annually the full amount of one-third of the commission (exempt and free from any charge or expense thereon) which should annually arise in transacting the business of the aforesaid company, whatsoever kind of commissions they may be, and for this purpose we agree that our account of commissions should be adjusted and made up, &c., and the said one-third of the commissions should annually amount to 3,000*l*. We further agree that Boylston is not responsible for any debts, dues, or demands contracted by us nor to be charged or accountable for any losses."

Under this it was held that Boylston, having received profits, he was chargeable to third persons as a partner.

In 5 Barnwell & Ald., 954, the dormant partner was to furnish 20,000*l* to carry on the business. The other party was to raise 20,000*l* more. The lender was to have as his share of the profits 2,000*l* per annum, to be taken out of profits, if sufficient; if not, from the capital. At the end of ten years he was to have back his 20,000*l* and interest from the dissolution of the partnership. The court say:

"By the execution of this deed Enderbey, the lender, undoubtedly made himself answerable as a partner to all strangers, though he might not be answerable as between himself and Gilpin."

This contract was held not usurious, but a contract of partnership.

In 5 Wait's Act. and Def., 112, it is said:

"If the lender can be shown to be the person for whose benefit the business is carried on, it is a better test of partnership than communion of profits."

In 18 Vesey, 300, Lord Elden says:

"The true criterion is whether they are to participate in profit. That has been the question ever since the case of *Grace* vs. *Smith*. If the actual contract gives a claim upon the profits or the application of them, that is partnership. If there was no claim upon the profits or the application of the profits, then it is not partnership."

In all of these cases thus far cited and in the various textbooks referred to the sharing of profits *as profits*, and not a mere personal claim on the other party, has been held as an infallible test of partnership liability, or, as to third persons, placing it upon the principle, as stated in *Grace* vs. *Smith*, that by taking a part of the profits he takes from the creditors a part of the fund which is the proper security to them for the payment of their debts.

It is, however, proper to say that this reason for the sharing of the profits being a test has been questioned by the later English authorities and by some American authorities, following such English cases, and it has been held that while the sharing of profits is generally cogent evidence of partnership, and generally conclusive, yet that cases may occur where such sharing of profits alone will not constitute such relation.

This modification first arose in the case of *Cox* vs. *Hickman*, 99 Eng. Com. Law, 47, decided in 1860 by the House of Lords, reversing the court below.

In this case Smith, under the name of Stanton Iron Co., being indebted, made an assignment to five trustees *to carry on the business*, to pay interest, &c., *out of the profits*, and to "pay and divide the net income of the business remaining, after answering the purposes aforesaid, with and among all and singular the creditors of the company in ratiable proportions according to the amount

of their respective debts." It was claimed that under such agreement the creditors executing it became liable as partners for debts contracted by the trustees in carrying on the trade. This claim was sustained by the court below (18 C. B., 616) on the principle that the creditors shared in the profits with the trustees, but was reversed by the House of Lords, holding, among other things, that their relations were not homogeneous, the trustees acting in their trust capacity. The principle is thus stated by Lord Cronworth:

"It is often said that the test or one of the tests whether a person not ostensibly a partner is nevertheless in contemplation of law a partner is whether he is entitled to participate in the profits. This is no doubt, in general, a sufficiently accurate test, for a right to participate in profits affords cogent, often conclusive evidence that the trade in which the profits have been made was carried on in part *for or on behalf of the person* setting up such a claim. But the real ground of the liability is that the trade has been carried on by persons acting *on his behalf*. When that is the case he is liable to the trade obligations and entitled to its profits or to a share of them. It is not strictly correct to say that his right to share in the profits makes him liable to the debts of the trade. The correct mode of stating the proposition is to say that the same thing that entitles him to the one entitles him to the other, namely, that the fact that the trade has been carried on on his behalf, *i. e.*, that he stood in the relation of principal towards the persons acting ostensibly as the traders by whom the liabilities have been incurred, &c., under whose management the profits have been made."

This, he further says, was the real principle in *Waugh* vs. *Carver*. He also says of the case of *Bond* vs. *Pittard*, 3 M. & W., 357:

"Each of them worked for the *common benefit of both*, and each of them, therefore, acted as agent of the other. The produce of the labor of each was to be brought into a common fund to be afterwards shared according to certain arrangements between themselves. The case is really free from doubt. In this case two persons agreed to transact business as attorneys—one to have £300 yearly out of the first profits, and was not to be liable for any losses."

Lord Wensleydale says: The principle of principal and agent should be kept constantly in view.

"A man who orders another to carry on trade, whether in his own name or not, to buy and sell, and to pay over all the profits to him, is undoubtedly the principal, and the person so employed is the agent; and the principal is liable for the agent's contracts in the course of his employment. So, if two or more agree that they should carry on a trade and share the profits of it, each is a principal and each is an agent for the other, and each is bound by the other's contract in carrying on the trade as much as a single principal would be by the act of an agent who was to give the whole of the profits to his employer. Hence it becomes the test of the liability of one for the contract of another, that he is to receive the whole or a part of the profits arising from the contract by virtue of the agreement made at the time of the employment. I believe that this is the true principle of partnership liability. Perhaps the maxim that he who takes the profits ought to bear the loss, often stated in the earlier cases on this subject—*Waugh* vs. *Carver*, &c.—is only the consequence, not the cause, why a man is made liable as a partner."

The next important case following that of *Cox* vs. *Hickman* was *Bullen* vs. *Sharp*, Law R., 1st C. P., 86, decided in 1865, Court of Exchequer. The person sought to be charged in this case was not held liable, the court saying:

"It is not an arrangement by which the defendant agrees to carry on the trade in the name of his son, nor one in which he stipulated for a portion of the profits of that trade, but it is a purchase of an annuity *secured only by the personal promise* of the son."

Afterwards, an assignment of the business having been made to defendant and another as trustees to take the profits, held, by a divided court, that although they took the profits, yet they did not cause the business to be carried on *for them*, and thus, according to *Cox* vs. *Hickman*, they were not liable. The court below held them liable.

This case is a very elaborate and valuable one. The principle of *Cox* vs. *Hickman* is thus stated:

"The real ground of liability (as a partner) is that the trade has been carried on by persons acting on his behalf, (that is, of the person sought to be made liable;) so that he would stand in the relation of principal towards the persons, acting *ostensibly* as the traders, by whom the liabilities have been incurred, and under whose management the profits have been made."

"The test is, whether it is *such* a participation of profits as to constitute the relation of principal and agent between the persons taking the profits and those actually carrying on the business."

A majority of the court thought that the facts of this case did not constitute such a relation of principal and agent.

But in this case at bar, besides sharing in the profits, Squier was entrusted with the money named to invest in vouchers *for Edmonds*, such vouchers to be *his*, he to take his profits *from their proceeds*, and Squier is directed as to the kind of vouchers to be purchased, the *rate* to be paid, and for his *services* is to have what he can make over and above the profits to be *retained* by Edmonds, who does *not* rely simply upon the personal security of Squier. Does not such an agreement constitute the relation of principal and agent?

The case of *Perley* vs. *Driver*, 5 Ch. Div., 458, decided in 1876, is one very much like the case now before the court.

Driver agreed, in 1868, to advance, by way of loan, to a partnership, 2,500*l*, to be paid by January 1, 1883. An account was to be taken within three months after July 1st of each year, and Driver was to have, October 1 of each year, "a sum equivalent to five equal sixtieths' part of the apparent clear gains and profits made by the said partnership in the year preceding the 1st of July then last past," providing that if a certain advance was not made, then a proportionate share of profits of said 2,500*l* to the whole capital advanced—the 2,500*l*—to be repaid at the end of the period of loan. Suit was brought by Perley upon a bill of exchange of the company.

The court say that the sharing of profits is conclusive evidence of partnership, unless there is something showing the contrary; that the case of *Cox* vs. *Hickman* was a case where *creditors* sought to be charged could get only their *debts*, and as soon as the profits paid these the business was to go back to Smith & Co. The court further say:

"The partnership was for the term of 14 years. The loan was also *for the same time*. If the partnership comes to an end sooner, the loan must come to an end sooner. So that, in fact, if you were to describe the contributors as dormant partners in the

concern, liable to a limited extent to loss, and with a guaranty of their capital from the active partners, you would exactly describe their position."

The arrangement was characterized as a "barefaced and palpable" contrivance to derive benefits and avoid losses, and the alleged loanor, Driver, was held liable upon a bill of exchange executed in the name of the company.

In *Kilshaw* vs. *Jukes*, 3 Best & Smith, 868, 113 Eng. C. Law, reviewing *Cox* vs. *Hickman*, the syllabus is:

"The test is whether a person who is not an ostensible partner in a trade is, nevertheless, in contemplation of law, a partner, is not whether he is entitled to participate in the profits, although this affords cogent evidence of the conclusion, but whether the trade has been carried on by persons acting in his behalf."

In *Beauregard* vs. *Carr*, 91 U. S., 140, the court say:

"It was sufficient to create the partnership relation that profits to be ultimately divided between the parties were contemplated from their joint enterprise;" and, further, "A debt contracted by one partner, even without authority from the others, binds them if it be proved that the partnership *was benefited* by the transaction."

See, also, 2 Sawyer, 286, and 53 N. H., 276.

The court will find probably the most philosophical statement of the grounds of the liability of dormant partners that can be found anywhere in 10 Am. Law Register, 209, April, 1871, by one S. D. Davis, in which he maintains that the true ground of such liability is that a business is carried on *for the benefit* of the party sought to be charged, who shares in the profits of such business.

This author says, substantially, that instead of saying that he who shares in the profits is liable to creditors as a partner, *because* he takes from that fund which is the proper security to them for the payment of their debts, it seems more accurate to say, because, by having an interest in the profits *similar in character* to that of the other partner or partners, he has enjoyed a benefit conferred directly upon him by the creditor, and thereby, through an implied contract arising therefrom, he becomes as much his debtor as the party or parties already known to be so indebted.

For example, A and B, known as partners, are liable, because they have received a joint or common benefit directly from the use of the creditor's money or property; and inasmuch as it is a joint benefit derived from a joint use and disposition of that money or property, the law attaches to them the joint liability of partners, upon the ground of an implied contract which *ex-hypothesis* they have expressly assumed. Now, if C can be shown to have a similar interest in the profits and thus deriving a similar benefit, and thereby to sustain a similar relation to the creditor, it follows that he is liable on the same ground and for the same reason to the same extent as the other partners are, and is himself, as to those from whom he has derived such benefit, a partner, on the ground of an implied contract to pay for the benefits he has received or expects to receive from the use and disposition of the money or property of such creditor. This most clearly expresses the reason why the sharing of profits, similar in character to that of the other party, is an almost infallible test of partnership, as to creditors, and it also discloses why the parties in the case of *Cox* vs. *Hickman* were not held as partners where certain *trustees* in carrying on this business of a company had incurred indebtedness; and it was sought to charge creditors of that company with such indebtedness, because, by the arrangement, the profits were to be applied to the payment of the debts of the company to them. The interests of the trustees and of these creditors were not homogeneous or similar in character, and for this reason there could be no *joint liability*, which must be established in order to hold persons as partners.

Edmonds must be held as a partner, according to either one of these principles—sharing of profits, relation of principal and agent, or business carried on for his benefit. But the case shows not simply *one* of such tests, but that all three of them are applicable to his relations with Squier & Co.

Let us examine a little further the character of the transaction between Edmonds and Squier, in the light of the authorities we have cited. Take, for example, the agreement of September, 1880. The first statement in it is the delivery of $34,000 by Edmonds to Squier for investment by the latter for the former. Edmonds says in his answer and testifies that this was a loan to Squier

& Co., for which he took his note. Let it be so. Then such $34,000 was capital belonging to Squier & Co. It was the money by which the business of Squier & Co. was carried on. The vouchers were to be purchased with Squier's *own money*. This would exclude the idea that there was any investment or business arrangement separate and distinct from the general business of Squier & Co. But, at the same time, Edmonds *did* have a special claim upon this money. He had by the agreement the right to require Squier & Co. to invest the amount of such money in vouchers particularly described, and at certain rates, so that they would yield a profit of two per cent. a month, and the right to have such vouchers immediately upon their purchase transferred to him as his property, and to have and to hold possession as security both for his loan and for the agreed profits. Suppose, for illustration, that all of the vouchers then purchased were due in four months; their amount would be $36,720, all of which becomes the property of Edmonds. At the end of the four months he "retains" profits of $2,040, and allows to Squier $680. The vouchers are exchanged with Squier & Co. for an equal amount, similar in kind, that is, so purchased as to produce a similar profit. This is the way Squier's notes, of which twenty are produced, read: "Please call to-day and exchange vouchers." (P. 32.) The first series of vouchers, then, or the money realized therefrom, is transferred to Squier & Co., and goes to keep up the capital of Squier & Co. It belongs to the business of Squier & Co. as its capital, though Edmonds has a claim upon it, as we have described. At the end of eight months Edmonds has the vouchers in hand, but is bound to exchange them with Squier & Co., as before, retaining "out of the profits" of $2,720 his share, $2,040, and allowing to Squier & Co. again $680.

And so this process is repeated indefinitely, and to be terminated only by death or a notice of three months.

This was the *nature* of the business for over five years, though not, of course, with the regularity of our illustration, vouchers having been purchased, due in from one to six months, and requiring exchanges to be made monthly, and perhaps oftener. The original capital has been changed probably more than twenty times and its identity completely lost.

Now, if it be claimed that this was the business of Squier & Co. and carried on with the capital of Squier & Co., it still was a business in which Edmonds shared the profits, and had the right to share the profits. Edmonds cannot claim that there was a business of a firm of Edmonds & Squier separate and distinct from that of Squier & Co., in which alone was the sharing of profits, and that such sharing of profits extended only to such separate business of Edmonds & Squier, for his answer and his testimony throughout alleges in the most strenuous manner that the money was a "loan" to Squier & Co., and if so, the capital of the business was the capital of Squier & Co., and the produce of such capital and business was the profits shared in by both Edwards and Squier & Co.

Now, while Edmonds has this connection with the business of Squier & Co. and this demand upon it, still there was no provision in the agreement that the identical money should be applied to the purchase of the required vouchers, or that any separate account should be had of transactions growing out therefrom. The demands of the agreement were satisfied so long as the required amount of vouchers were supplied or purchased with *any* money of Squier & Co.; and, indeed, if there should occur any deficiency of money, proceeds of this transaction, Squier & Co. were required to supply the vouchers out of other funds.

There was no provision for keeping up any distinction between business connected with the money thus loaned to Squier & Co. and any other business of Squier & Co. When, then, money was borrowed or indebtedness incurred by Squier & Co. for the benefit of such firm in a general way, that part of such business producing the required vouchers and in which Edmonds was interested shared in the general benefit of the business of Squier & Co. In other words, the business of Squier & Co. was the *foundation and support* of the business of the agreement, and therefore necessary indebtedness incurred for the benefit of such foundation and support was for the common benefit of business of such agreement, resting and dependent upon such business of Squier & Co.

And when it appears that, in fact, the principal, and, indeed, almost the entire business of Squier & Co., was this business of

producing the vouchers called for by the agreement, it is quite apparent that such business in which Edmonds shared the profits receives a common benefit with Squier & Co. in the indebtedness incurred to benefit the business of Squier & Co. There certainly is no possible means of making any discrimination between the two, and no provision was made for so conducting the business as to enable any discrimination to be made, and this merging or confusion thus produced by his own act or by his permission would render Edmonds responsible for general indebtedness upon principles analogous to those of confusion of goods.

See 93 U. S., 575; 10 Mich., 447; 30 Me., 370; 2 J. Ch., 62, 108; 45 Am. Dec., 227, *n*.

Now, when the vouchers in the hands of Edmonds, to the extent of many thousands of dollars, turned out to be uncollectable and worthless, as it was contemplated by the agreement might occur, then, as such agreement required, other vouchers must be procured out of any other money that Squier & Co. could command, no matter by what means he could procure it. He *must* get it in some way, and if in no other, must borrow it or use the money he has on deposit. Indeed, it was a part of the business of Squier & Co. to receive money on deposit, for which he paid interest, with the public understanding that he was using said money in investments for his own purposes, and with the knowledge of Edmonds that he was using it in this business of procuring vouchers of this character. And thus it happens that, in strict harmony with the agreement and according to its requirements, as the testimony shows, the vouchers in Edmonds' hands at the time of the failure, and constituting the principal assets of the business, were actually purchased with the money furnished by the existing creditors, and Edmonds actually claims the benefit of the money thus obtained from such creditors, and firmly insists upon his title to the vouchers purchased thereby.

Now, the benefit of money borrowed by Squier & Co. is not alone that general, indirect benefit that is received by a mere creditor when his debtor obtains money or property so as to become better security. It is a benefit to a business in which he has an interest and out of which he derives profits. He has, it

is true, an indirect interest in the general welfare of the firm of Squier & Co. in his character as a creditor, but, in addition to this, he *also* has a direct interest in the general benefits to the business of such firm as one deriving direct profits from the operations of such business. He bears the double relation of creditor of the firm and of one deriving direct profits from a substantial portion of the business of such firm, and a portion, too, which cannot be separated from the general business of such firm.

There is a statute in the District of Columbia providing for limited partnerships, whereby one can invest a certain sum in a business of a firm without becoming responsible for the debts of the partnership as a general partner. But this must be done openly. It must be a matter of publication and record, and of very particular formalities, which must be observed with the greatest accuracy. A very slight deviation from these requirements will render the party liable to the general creditors of the firm.

> Collyer on Partnership, sec. 99 to 104, and cases there cited.
> 5th Wait Act. and Def., 115, and cases cited.

The principles upon which such limited partnerships are authorized, and the reasons given for the publicity, and the strict compliance with the statutory provisions required, well illustrate the reason why one should not be allowed to increase the capital of a business, giving to it the appearance of credit and abundant resources, and deriving profits therefrom, without incurring any risk of becoming responsible for indebtedness created, perhaps, upon the very credit obtained by appearing to have abundant capital, when, in reality, the party furnishing such capital and claiming benefits from its use, insists that he is not liable for such indebtedness so created.

The firm of Squier & Co. was insolvent. It kept up its business and its appearance of solvency for years, by which it was enabled to obtain credit and money on deposit and upon notes of the firm upon the capital furnished to it and invested in its business by Edmonds.

It is possible to conceive that a certain sum might be invested with a firm doing business, and that it might be renewed and

continued, without the investor becoming liable to the general creditors of such firm; but it must be manifest that in such case great pains should be taken to provide for the keeping of such investment separate and distinct from the general business of the firm, and that its identity should not be lost or merged with the other capital, or the transactions arising therefrom, mingled with the general transactions of such firm; and if such investment bears a large proportion to the general capital, such publicity should be given as not to deceive creditors of such firm, or create a false impression, as to its real resources or right to public credit.

The following must be regarded as an incontrovertible proposition of law:

If A loan B & Co., doing business as a firm, a large sum of money, constituting the principal capital of such firm, which, by written agreement, is to be employed in the business of B & Co. in such a way as to produce regular profits or dividends, in which A has the right to, and does, share with B & Co., and without providing for keeping such loan distinct from other capital or the business in which it is employed distinct from the other business of such firm, then A is interested in the firm, *both* as a creditor *and* as one sharing directly in such profits, and is, therefore, a partner in such business as to creditors of such firm.

This rule, applied to the facts of this case, must inevitably constitute Edmonds a partner with Squier & Co. as to the creditors represented by the complainant in this cause.

Counsel for defendant have cited several authorities showing that where there has been a loan of money, the use of which is to be paid by a share of the profits, it does not necessarily constitute a partnership relation.

In doing this counsel assume that they have established that Edmonds loaned money to Squier, and that what he received was simply compensation for the use of such money.

But this is not true, and for this reason those authorities do not apply.

Again: a careful examination of these authorities will show that the question is, whether the person advancing the money takes the profits *as profits* or simply as compensation for the use of his money: whether he has a property in the profits themselves

or relies alone upon the promise of the other party; whether he controls the use of the money or gives up all control over it to the one who uses the money? These are the questions in all the cases.

Thus, in *Smith* vs. *Knight*, 71 Ills., 148, it is plain that there was no *property in the profits as profits*, even though the money to be paid was to come from the profits, nor did the loanor retain any control over the business or have any right to such control.

This is the express reason given by the same judge in *Linton* vs. *Millikin*, 47 Ill., 178, cited in 71 Ill. He says:

"What do the facts show? Simply a borrowing of money for an indefinite time, he taking his chance for one-third of the profits in lieu of interest on his money. Millikin *had no interest in the machines manufactured or in the notes to him from the purchasers on their sale*, nor had he any lien upon them. He relied upon the promise of the firm to repay him."

The other Illinois cases, cited in 71 Ill., in support of its opinion were where the question was whether the parties were partners *inter esse*.

In *Curry* vs. *Fowler*, 87 N. Y., 33, the question is stated to be "whether Fowler had *such an interest in the profits of* the business of the firm as to render him liable jointly with them as a partner."

The court place their decision entirely upon the principles of the case of *Richardson* vs. *Hughlitt*, 76 N. Y., 55, where it is said that "a person who had no interest in the business of a firm or in the capital invested, save that he is to receive a share of the profits or a compensation for services, or for money loaned for the benefit of the business, is not a partner." Court says: "In neither of the cases can it be urged on any reasonable ground that there was any attempt to evade responsibility as a partner while reaping the advantages of the copartnership. The same judge delivered the opinion in both of these cases. In neither of them was there the question of dormant or secret partners.

As to the law of New York upon this point, special attention is called to 58 N. Y., 272, and neither of the later cases professes to overrule this.

Special attention is also called to the case of *Pooley* vs. *Driver*, 5 Ch., Div. 458, where this point is most elaborately considered.

It was regarded as decisive in this case that the contributors had *control over the employment of the money* and the right to have the money loaned kept in the business.

The utmost pains were taken to so provide that the loanors should not be considered as partners; as to which the court says:

"It is an elaborate device, an ingenious contrivance, for giving these contributors the whole of the advantages of the partnership without subjecting them, as they thought, to any of the liabilities. I think the device fails."

Court says that *Cox* vs. *Hickman* does not overrule the earlier authorities as to the sharing of profits constituting sufficient evidence of partnership, but that it only gives another reason why this is so.

The suggestion is made that a great amount of capital has been furnished by Squier and by other parties, as shown by the indebtedness of Squier, of over $80,000. But this is quite misleading. Edmonds did not, *in fact*, advance the $44,000, nor even the amount shown by his checks. He first advanced $2,000, afterwards he advanced $2,000 more; but this is made up, *in part*, from the profits of the first $2,000. In this way the final result is, that while he appeared to have advanced $44,000, he had drawn out about $29,000, making an actual advance of only about $15,000.

An investigation of the other indebtedness will show that it has arisen to a great extent from excessively usurious interest. A great part of the indebtedness was incurred prior to Edmonds' connection with Squier. Smith estimates it at from one-half to two-thirds. (P. 125.)

The evidence shows that there are from $50,000 to $60,000 of vouchers that are entirely uncollectable, the cost of which, however, must have been about $50,000, and which must have been a loss.

Taking this loss, the $29,000 drawn by Edmonds, and the $35,000 assets on hand at the failure, and the expenses of carrying on the business, besides the support of the family of Squier and the house and lot owned by him, and it is not difficult to see what became of the money.

This disposes of the suggestion that money advanced by Edmonds has been used, to any great extent, for the individual purposes of Squier.

There is no foundation for the suggestion that there is no more reason for holding Edmonds liable than there is for holding other people liable who have loaned money to Squier & Co. There is no evidence of any such agreement between the other creditors and Squier as is shown between Edmonds and Squier.

The decision of the justice holding the Special Term was based upon the ground that although there was a partnership as between Edmonds and Squier in the matter of the investment of the particular vouchers purchased with money advanced by him, and as to the business of purchasing such vouchers as might be exchanged for them, yet that his liability did not extend to the creditors of Squier as to matters not within the scope of the business of such particular venture, conceding, however, that if there were creditors upon liabilities arising from this venture, Edmonds would be bound to them.

The objection to this theory at the outset is that it is a different defense from that set up in the answer, and one that he is estopped from making by his repeated oath. He insists that his relation is simply that of a creditor of Squier. The theory of a special partnership is a departure from the answer that could not now be set up in behalf of Edmonds, and which he, himself, disclaims.

We think that the illustrations of the justice below, of his investing a certain quantity of 3 65 bonds with Riggs & Co. and of particular customers of brokers in Wall street, are not applicable to the circumstances of this case. This case shows that in 1879 the assets of Squier & Co. were only $3,496.97, (p. 70;) in Aug., 1883, as advances had been made, $21,872.83; in June, 1884, about $35,000 live assets; the nominal value being about $60,000. (p. 70.) At no time did the whole capital exceed the amount of the advances which had been made by Edmonds.

The evidence shows that substantially the entire business of Squier was that of dealing with vouchers of the character in which Edmonds was interested, and Edmonds claimed all of such vouchers and received nearly all at the close of the business. (P. 86, 71.)

"All money that came into the bank was placed in one drawer, and from it the purchases of vouchers, notes, &c., were made. The money all went for the purchase of vouchers and papers, the expenses of checks, and so on." The vouchers that Edmonds had come from this money. (P. 71.)

There was but one banking-house, one drawer, one kind of business, one set of books, and one business name.

But concede, for the sake of argument, that there was actually a firm consisting of Edmonds & Squier, which, for convenience, may be so designated, and an individual business of Squier, done under the name of Squier & Co.: Now, the individual business of Squier and the firm business of Edmonds & Squier were both conducted under one name, "Squier & Co." Let us consider some authorities in this light of these facts.

In Story on Partnership, Sec. 139, it is said:

"Suppose a partnership to be carried on in the sole name of one of the partners, and he, at the same time, should transact business upon his own separate account, and he should borrow money in his own name. In such a case the question may arise whether the partnership is bound for such borrowed money or the individual partner only; and it must be resolved by taking into consideration the whole circumstances of the case. Thus, if the money is in fact borrowed for the partnership business, or it is in fact applied to the partnership business in the absence of all controlling circumstances, the partnership will be bound therefor; since the fair presumption is, that it was intended by the partner to pledge the partnership credit, and not merely his individual credit, whether the partnership was known or unknown to the lender." (See, also, Sec. 137, 138.)

"During the continuance of the partnership the ostensible partner carried on the business of the partners in the same name as that in which he transacted his private business, and in that name contracted a debt for money borrowed, but it did not appear whether the money was borrowed for the partnership or his private use. Held, that in the absence of evidence, the presumption is that the loan was made on the credit of the partnership business."

Mifflin vs. *Smith*, 17 Serg. & Rawle, 165. Syllabus.

In Lindley on Partnership, at p. 269, in note, this case is stated in the following terms:

"If a partner carries on a private and a partnership business in the same name and borrows money in that name, it is deemed to be borrowed for the partnership, no evidence being given to the contrary."

In Estate of Davis, 5 Wharton, 530, reported in 34 Am. Dec., p. 574, the Court say:

"In the absence of express proof of a separate contract, the application to partnership uses of money borrowed by one partner is evidence to show that the debt is joint. And the principle applies as well after as before the dissolution of the partnership." *Ex parte* Bonbonns, 8 Ves., 540. "There is so much justice in making the firm which receives the money pay the creditor, *qui sentit commodum sentire debit et onus*, that we feel disposed to seize hold even of slight circumstances in addition to the receipt of the money to raise the implied contract, and to infer that the loan was made to the firm and not on the credit of the individual partner."

In *Brooks* vs. *Washington*, 8 Grat., 268, 56 Am. Dec., 142, where dormant partners were held, it was said:

"A dormant partner to whom a vendor gives no credit, and whose responsibility constituted no part of the consideration moving him to sell, is liable to the whole extent of engagement in matters which, according to the usual course of dealing, have reference to the business transacted by the firm.

"It is only, I think, in cases where a separate credit is *clearly given* to one of the partners to the exclusion of the rest, that the latter are absolved. Where one deals with a partner in matters relating to the partnership business, it ought to be inferred that he deals on the credit of the partnership, unless the circumstances prove that, though apprised by the partnership, he meant to give individual credit. It would be hard to hold him bound to prove that he knew of the partnership and dealt on its credit. The presumption is in the affirmative, and to discharge the firm it ought to appear clearly that he gave credit to the individual alone and intended to absolve the other partners."

Court say, in substance, that it is perfectly clear that the dormant partner is equally liable with the ostensible partner, and to remove the presumption it must be shown that the creditor knew of the partnership, and *with such knowledge* expressly contracted upon the individual credit of the ostensible partner.

In the note to this case, 56 Am. Dec., 150, it is said:

"In the case of a dormant and secret partner, credit, if given to one partner, is given only to the ostensible partner, for no other partner is known. Still, however, it is not treated as an exclusive credit, for the law in all cases of this sort founds its decision upon the ground that the creditor has had a *choice or election* of his debtor, which cannot be when the partner is dormant or unknown. The principle upon which dormant partners are liable is, that as they have the benefit of the share in the profits which are a part of the funds to which a creditor looks for payment, they shall be bound by the burdens."

In *South Carolina Bank* vs. *Case*, 8 Barn. & Cress., 427, a firm, consisting of A, B & C, in England, sent C to America to transact business for the firm, but in his own name alone. In violation of an agreement between them, he indorsed a bill, using his own name, but it being considered by the court that the object was to raise money for the benefit of the firm, his name must be taken as the copartnership name, and the firm should be held liable.

In *Barton* vs. *Hanson*, 2 Camp., 97, cited in 56 Am. Dec., 145, it is said—

"It is possible that the separate credit may be given to one of two partners individually, but the presumption of law is otherwise, and that presumption must be repelled by very clear evidence, and this is reasonable; for why should the partner desire to bind himself and absolve the concern? Or why should the dealer with him prefer to bind him individually, when, if bound as a partner, he is personally not less bound, and there is the additional security of his partner?"

In *U. S. Bank* vs. *Binney*, 5 Mason, 176, a distinction is recognized between cases of known partners and secret or dormant partners in this respect.

In the case of partners, publicly known as such, the individual note of one of the partners, even though it be for partnership purposes, is taken presumably upon the individual credit of such partner. This is upon the principle that the creditor, knowing of the partnership, has elected to take such individual credit.

But, says Judge Story, in this case—

"In respect to secret partnership, where the credit is given only to the ostensible party, yet, if it be in the course of the business

of the partnership and for *the common benefit*, the secret or silent partners are bound, for those who receive the benefit are also bound as partners."

See, also, *Griffith* vs. *Buffum*, 22 Vt., 181; 54 Am. Dec., 64.

If there be any cases apparently at variance with the principle of these cases, as to presumption, it will be seen that they are cases of *known* partnership, or when the individual credit was for something without the scope of the partnership business.

But here we are not left to mere presumption. The evidence is overwhelming that the principal object of the business that was carried on was to pay the $540 per month to Edmonds, according to the inexorable demands of the agreement. He did receive from the business about $29,000. The principal capital employed was that furnished by Edmonds, or its proceeds. All the facts we have before stated tend to the same conviction. The court can have no doubt upon this subject. It will be a great wrong, a terrible injustice, to charge Squier individually with all the indebtedness and to hold the firm of Edmonds & Squier entirely free, and to give Edmonds all of the valuable assets and leave to Squier only those that are worthless.

This, then, is not, in any event, a case for the dismissal of the bill. There is a partnership, even according to the theory of the opinion of the court below, and the presumption and the evidence concur in requiring the court to hold that there are some creditors of Edmonds & Squier, and the question as to the extent of such partnership indebtedness should at least be investigated.

W. WILLOUGHBY,
Counsel for Appellant.

Supreme Court U. S.
FILED
APR 19 1889

Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE B. WILSON,
Appellant.
vs.
JAMES B. EDMONDS.
} No. 245.

Supplemental Brief for Appellant.

ENOCH TOTTEN,
For Receiver.

R. O. Polkinhorn, Printer.

Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE B. WILSON,
Appellant.
vs.
JAMES B. EDMONDS.

No. 245.

Supplemental Brief for Appellant.

The bill in this cause, was filed by the receiver of assets of J. H. Squier & Co., for the purpose of subjecting the defendant as a partner to the payment of the debts of the concern. The bill was dismissed by the court below, and an appeal was taken to this Court by the receiver.

Statement of Facts.

For several years prior to 1879, one J. H. Squier, now deceased, had been engaged in the city of Washington, in the business of buying the pay-vouchers of officers of the army and navy, and of clerks in the civil service of the Government (71). He also occasionally bought notes and bonds (71). In the beginning of April, 1879, the amount of capital employed by him in this business was the sum of $3,496.97 (70).

On the 2d day of April, 1879, an agreement was made between Squier and the appellee, by which the latter agreed to advance to the former funds for the purpose of being used in the purchase of the vouchers in which Squier was accustomed to deal. The terms of the agreement, as stated by the appellee (14), do not agree with the terms of the contract which seems to have been carried out, as disclosed by the books of account of Squier (57). The appellee states that the advances were a loan for which notes were given to him by Squier, and that the rates of interest agreed upon was ten per centum per annum, but the books of account kept by Squier and produced, show conclusively that the rate of interest exacted from Squier and by him actually paid to Edmonds was one and a quarter (1¼) per centum *per month*. (38, 57.) From April 2, 1879, the appellee advanced a large sum of money to Squier in instalments varying from $500.00 to $3,000.00; a payment was made during every month except one, and as many as three advances were made in some months, until these various advances reached, August 31, 1880, the sum of $34,000.00 (57). Edmonds was paid his *profits* at the rate of one and one-fourth per centum per month, every month with unvarying and remarkable regularity (57).

On the 1st day of September, 1880, a contract in writing was entered into (25) by these parties defining their relative rights. This contract states and provides as follows:

> That Edmonds had delivered to Squier $34,000.00, to be invested for Edmonds in pay vouchers payable within six months, of officers of the

army, navy and civil service, but such purchases were to continue no longer than they could be made to yield a *profit* of two per centum per month.

The vouchers purchased were to be left in the possession of Edmonds to an amount equal to the sum invested, and two per centum additional.

Out of the *profits* Edmonds was to receive one and a half per centum *at the end of each month* on the sum invested; the rest of the *profits* were to be *enjoyed* by Squier.

Squier agreed to guarantee the genuineness and the payment by the Government of each voucher, and to return to Edmonds the principal sum over and above the "profits" upon the termination of the speculation.

Squier agreed to transact all the business and to receive and collect maturing vouchers *upon delivering other* vouchers similar in kind and amount, and payment to Edmonds of his share of *profits* at the end of each month; on default, then Edmonds was authorized to collect the vouchers.

Either party could, on three months notice, terminate the contract, and in this event all moneys so invested were required to be repaid to Edmonds, *besides the agreed "profits."*

As a further guaranty of such investment and *indemnity against loss*, Squier made his promissory note to Edmonds of even date.

After this agreement was concluded, Edmonds continued to furnish money to Squier in instalments, until March 3, 1882, when the advances appear by the books of Squier to have been stopped; up to that time the amount put into the business by Edmonds had reached the sum of $44,000.00 (57) as shown by the books of account, but Edmonds testifies that he

had, in fact, put in about $48,000.00 (27). Edmonds continued to draw his stipulated *profits* with the same monthly regularity; sometimes he drew his profits twice in the same month.

On the 1st day of August, 1883, another agreement, differing but slightly from the first, was made by the parties (11). Instead of employing the real name of Squier, as before, the apparent firm name of "J. H. Squier & Co." was used in this agreement. It was provided that the $44,000.00 should be invested in pay-vouchers as before, but not unless such investment could be so made as to yield to Edmonds "a net profit of one and one-fourth per cent. *per month* on $40,000.00, and one per cent. per month on $4,000.00, and *enough besides to pay said Squier & Co. for their services and for guaranteeing prompt payment of the vouchers*." Squier & Co. guaranteed the *genuineness* as well as the *prompt payment* of the vouchers, and the "return to said Edmonds of said principal sum of $44,000.00 *over and above said profits*." As a further guarantee and indemnity to Edmonds, Squier & Co., made two notes (21) drawing interest at ten per centum, per annum, one for $40,000.00 and the other for $4,000.00. It was also agreed in and by this contract that upon its termination all the money invested should be returned to Edmonds, with interest to the extent aforesaid, and that all moneys collected or received on the vouchers should be credited to Squier & Co. on the notes.

After this contract was made, the business went on apparently in the same manner, and Edmonds continued to exact and receive his "net profits," according to the terms of the last agreement, with the same strict regularity every month, (57 and 58), until May

31, 1884. Between March 31, 1882, and the last named date, his monthly profits amounted to $540.00 per month, and he was paid this sum each month. On the 1st of June, 1884, Squier failed, and on or about the 11th of the following September he died. Edmonds had received in profits about $29,000.00 (58, 52), and at the time Squier & Co. made the assignment the concern was in debt to the extent of about $109,000.00 (82). Assets amounting to about $7,000.00 were found in the possession of Squier (71, 83), and Edmonds had about $28,000.00 (71).

J. H. Squier had been engaged in business for several years prior to the beginning of the transactions between him and Edmonds. He had an office in which he had a counter (101) and employed one clerk. The safe of Mr. Edmonds was kept in this office behind the counter, and Mr. Edmonds had full and frequent access to it. Squier received deposits, subject to check, and borrowed money from time to time from various persons at varying rates of interest (87 and 88). His business seems to have been confined to dealing in pay-vouchers of the officers of the army and navy, and of persons employed in the civil service of the government, with an occasional investment in commercial paper (71). After Edmonds became interested in the business, the funds put into the business by him, were mingled in the cash drawer with the other funds, and all was used indiscriminately for the purpose of the business. Edmonds' interest in the business seems to have included the whole field. In his answer (6) Edmonds says that the securities which he had claimed on the failure of Squier as his special property, consisted "*mostly* of pay-vouchers," and we find in the list of worthless

vouchers (106) which he tendered to the receiver one promissory note for $1,000.00. The concern seems to have confined its business to dealing in these pay-vouchers. The clerk, Smith, says (71) that there was "scarcely anything" else done. Squier kept several bank accounts, some in New York and some in this city (80).

Assignment of Errors.

1. The Court below erred in dismissing the bill;

2. It erred in holding that Edmonds was not responsible to the creditors for all debts contracted by Squier or Squier & Co., subsequent to April 2, 1879.

Points and Authorities.

Edmonds was the principal in the business, and Squier, the nominal proprietor, was merely his subordinate, conducting the business in behalf of his principal for a compensation to be derived from profits.

When Edmonds became interested in the business Squier's entire capital was about $3,496.97 (91). There is no evidence in the case to show that he contributed any money whatsoever to the business after April 2d, 1879. He seems to have been struggling with financial embarrassment, and trying to keep up his failing business by borrowing at high rates of interest (88). By securing a large sum of money from Edmonds to be used in the business, he might well have expected to gain credit and secure large deposits in the concern, by means of which his own gains would be much increased. His hope in this direction could not have been realized, or, at all events, not suffi-

ciently to offset the exhausting drain caused by the payment and withdrawal of Edmonds' excessive share of the "profits." Therefore, Edmonds owned $44,000.00 of the capital employed in the business as against $3,496.97 owned by Squier, or in about the proportion of twelve to one. If Squier had been wholly without capital, and an arrangement had been made whereby he was to manage the business, pay the expenses of running it, and to receive all the net profits over a specified percentage for his compensation, while Edmonds was to furnish all the capital and to receive the specified percentage of the net profits and to get back his capital at the final close of the business, there can be no doubt that Edmonds would have been held liable as principal for the debts of the concern. This case cannot be distinguished from the one supposed. There might have been some doubt as to whether or not Squier could have been held as a partner because of his participating in the *net* profits. In fact, at the date of the first contract, September 1, 1880, the amount of capital owned by Edmonds was ten times greater than that of Squier. Suppose it had been fifty times more? Could Edmonds then be heard to say that he was merely lending money at interest to Squier?

On a slight examination of the terms of these extraordinary contracts, all the elements of a partnership, as to third persons, will be found.

It was stipulated that Edmonds was to be paid his gains out of the "profits," and out of the net, as distinguished from the gross "profits."

It will be observed that by the terms of the first agreement, of 1880 (25) it is provided that the funds shall not be invested unless it can be done so as to "*yield a monthly profit of two per cent. or more.*" By the second (August, 1883,) the purchase of vouchers is prohibited "unless they are purchased so as to yield to said Edmonds a net profit of one and one-fourth per cent. per month on forty thousand dollars, and one per cent. per month on four thousand dollars, and enough besides to pay said Squier & Co. for their services and for guaranteeing prompt payment of the vouchers." (18.) The understanding was that the discount charged on cashing these vouchers should be so great as to preclude the chances of losses, and to insure an abundant surplus with which to pay the stipulated profits, and also the agent for his services. By the terms of the contract, if that end was not accomplished the business was to stop. If the stipulations of the agreement had been fulfilled, these profits must, necessarily, have been realized. It seems, therefore, beyond doubt, that the agreements contemplated the payment of both Edmonds and Squier out of the *net profits.*

The conclusion that he was to be paid out of the profits can not be disturbed by the excessive care of Edmonds in trying to guard against possible loss by requiring Squier, by the terms of the agreement, to guarantee the payment of all the securities, as well as the final return of the capital invested to Edmonds. Such harsh conditions should operate against, rather than for the person exacting them, where creditors are concerned.

Of course it was not in the mind of Edmonds that there should be losses. He provided, as he thought,

against debts by prohibiting the investment of the capital, except at extravagant rates of discount; but it is plain that the *profits* he was interested in were the *profits* resulting from the operations he had deputized Squier to undertake, in his behalf, under the directions and limitations found in the contracts.

The Supreme Court of Ohio, says, on this subject, (7 Ohio St., 179):

> "We apprehend the rule is, at this time, well settled, that even an agent cannot stipulate with his employer to receive an interest in the profits, other than *gross* profits, as a remuneration for his services, without thereby becoming a partner as to third persons. If the contract be that he shall receive for his compensation a certain portion of the *net* profits, the agent would thereby become a partner as to third persons." (See also *Leggett* vs. *Hyde*, 58 N. Y., 272; *Everett* vs. *Coe*, 5 Denio, 182.)

The agreements gave Edmonds full authority over the business.

He was made the custodian of the vouchers to the full extent of the capital invested by him, and two per centum in addition. He could have stopped the purchases at any time, and called for an accounting, or could have sold the vouchers in his custody.

By the terms of the first contract he was to hold in his own custody nearly nine-tenths, and by the terms of the second nearly twelve-thirteenths of the entire capital employed in the business.

He was entitled to an accounting at the end of every month.

If the business had been profitable, instead of a losing business, and Squier had neglected or refused

to deliver the possession of sufficient vouchers to Edmonds to gratify the stipulations of the contract, an equity court, as between them, would have compelled Squier to disclose all the particulars of his purchases and investments, and to account for and pay over to Edmonds the profits agreed on. It is a significant fact in this case that Edmonds did demand and obtain an account at the end of every month, and did actually receive his "profits" or "dividends," as he was pleased to denominate them. (100.)

This court has said that one of the most approved *criteria* of the existence of partnership is "the right to compel an account of profits in equity.

Pleasants vs. *Fant*, 22 Wall, 120.

The appellee actually participated in the profits as principal or proprietor and not as a lender of money.

It is true that he selected a man to transact his business who already had an establishment and was engaged in that very business in which he desired to invest his money. But this was only a precaution,—a manifestation of a desire to secure an agent who possessed experience in dealing in that class of securities. The capital invested in this establishment was utterly insignificant; it might as well have been wholly without capital. It will hardly be argued that selecting a man already in the business and possessing a few dollars, a capitalist can avoid the responsibilities of trade which he would necessarily incur by establishing an agent in such business from the outset. If this were so then the shadow is more potential than the substance in the law of partnership.

This Court has declared the law to be that—

> "Actual participation in the profits as *principal* * * creates a partnership as between the parties and third persons, whatever may be their intentions in that behalf, and notwithstanding the dominant partner was not expected to participate in the loss beyond the amount of profits. Every man who has a share of the profits of a trade or business ought also to bear his share of the loss, for the reason that in taking a part of the profits, he takes a part of the fund of the trade on which the creditor relies for payment."
>
> *Berthold* vs. *Goldsmith*, 24 How., 542.

In 1870 the Supreme Court of Errors of Conn. declared the rule to be as follows:

> "If a party is to receive profits in consideration of furnishing capital, he is clearly a partner, and is a *partner quoad* third persons even though it should be stipulated that the capital should be regarded as a loan and be repaid as such by the acting partner with interest, and although it should be further stipulated that the party furnishing capital should be regarded as a mere creditor in respect to the money by him furnished, and should have no interest in the stock in trade."
>
> *Parker* vs. *Canfield*, 37 Conn., 269.

That Edmonds was a *principal* in these transactions and as such participated in the profits, there should be but little doubt after an inspection of the contracts. In each of them is found a declaration, that Squier is to invest the money *in behalf of* Edmonds; both contracts declare that the fund is "for investment *by the latter* (S.) *for the former*." The

plain sense of such language is that this large sum of money was given to Squier by the defendant, and the latter was ordered to invest, collect and re-invest it indefinitely, according to his directions, as specifically set out in these contracts. He is also ordered to bring the securities, when purchased, and deliver them into the possession of Edmonds to be by him retained until replaced by others.

Lord Wensleydale, in *Cox* vs. *Hickman* (99 E. C. L. 97, and 8 H. of L. Cas., 268), declares the law applicable to such a case to be as follows:

> "A man who orders another to carry on trade, whether in his own name or not, to buy and sell, and to pay over all the profits to him, is undoubtedly the principal, and the person so employed is the agent; and the principal is liable for the agent's contracts in the course of his employment. So, if two or more agree that they should carry on a trade and share the profits of it, each is a principal, and each is an agent for the other, and each is bound by the others' contracts in carrying on the trade, as much as a single principal would be by the act of an agent who was to give the whole of the profits to his employer." (See also Story on Part., § 1.)

Both contracts fairly contemplated that Squier's insignificant capital, whether composed of his own or borrowed money, or both, should be drawn upon for the purpose of keeping the business going for Edmonds' benefit. The first agreement (25) provides that—

> "Said Squier * * * shall receive vouchers for collection as they mature, *upon delivering others* similar in kind and amount, and pay-

ment to said Edmonds his said share of profits at the end of each month."

The second contract contains substantially the same provision (18). This provision required Squier to procure and actually deliver to Edmonds vouchers "similar in kind and amount" before it could be possible for him to demand the matured or maturing vouchers from Edmonds. What fund was this to be drawn from? Of course the provision meant that Squier should purchase such vouchers with funds other than those furnished by Edmonds, thus placing everything within reach of Squier, under contribution for the advantage of Edmonds. And this contribution must have been continual because the vouchers were continually maturing and constantly coming in. The funds were to be invested, collected and reinvested continually and indefinitely.

From this view of the arrangement, it seems fair to assert that Edmonds intended, when he made the contract, that the entire energies of Squier's establishment should be employed to help create his profits. Is there anything inequitable, therefore, in holding him responsible for the debts contracted in that behalf by his agent? The conclusion is irresistible that Squier was given, at least, an implied authority to contract debts.

It is shown by the evidence that in carrying on this business of investing, collecting and reinvesting, Squier used all the money in the concern. The $3,469.97 which formed his capital when Edmonds joined him, the funds which his fictitious credit created by the presence of Edmonds' money enabled him to get hold of, either as loans or deposits, and

the capital paid in by Edmonds, were all commingled in one drawer, and were paid out indiscriminately for the securities purchased. When the crash came the assignee found only about $7,000.00 of assets in the possession of Squier (71, 83), while Edmonds held only about $28,000.00 (71) in securities.

Even if these contracts would otherwise leave Edmonds in the position of a lender of money, the interest or "profits" exacted for the use of his money was so excessive that an Equity Court will hold him responsible as a partner as to creditors.

This is on the principle that such a rate of interest is inconsistent with such a contract, and therefore a Court of Equity will treat it as a mere shift, to avoid the responsibility of the real position of the party. It is the same where wages of an employer, or the compensation of an agent, is so excessive as to be unconscionable.

Hargrave vs. *Conroy*, 19 N. J. Eq., 281;
Parker vs. *Canfield*, 37 Conn., 250;
Sheridan vs. *Medara*, 10 N. J. Eq., 469;
In re Francis, 2 Sawyer, 286.

In *Hargrave* vs. *Conroy*, the court said:

> "If the profits are so greatly out of proportion to the services rendered as to show that the arrangement is a shift to avoid responsibility, and that creditors are injured by the abstraction of so large a part of the avails of the business, it will be held as to them that such person is a partner."

In *Sheridan* vs. *Medara*, S. loaned money to C., who was in business in his own name; for this loan

S. was to be paid twenty-five per cent. in case C. succeeded in business. "In other words," said the court, "he was to receive nineteen per cent. per annum out of the profits of the business over and above the legal rate of interest. The better opinion is that such contract, though usurious as to the other party, as to third persons, made Sheridan a partner with the borrower, and liable as such for the debts of the firm."

The notes provided for by the two agreements were only for additional indemnity against loss to Edmonds, or were a mere subterfuge to avoid the responsibility while enjoying the benefits of a partnership.

The appellee in this cause, at the time of the transaction under discussion, was a retired lawyer (13, 35), and was presumably acquainted with the law governing secret partnerships. He knew that a mere lender of money to any person or partnership in business could not be held liable to third persons. We find in the first contract the provision that "as a further *guaranty* of such investment and *indemnity against loss*, said Squier makes his promissory note to said Edmonds of this date." There is nothing said as to the terms, the time, or the amount of the note, but it was merely for "indemnity against loss."

The second agreement appears (19) to provide for two notes drawing ten per centum interest. The words which fix the rate of interest seem to have been the result of an afterthought as they were interlined. (19). It also provides that all money collected or received by Edmonds on the vouchers shall be credited

on those notes. If this rate of interest, in addition to the profits, was to be exacted, the agreement was intolerable; this would make nearly 26 per centum per annum of interest. But this construction is not reasonable when taken in connection with the requirement that all the moneys shall be returned to Edmonds at the termination of the business with interest to extent aforesaid; that is to say, the interest at one and one-fourth per centum per month, on $44,000.00, and at one per centum per month on $4,000.00.

The attention of the court is invited to the testimony of the appellee, himself, where he makes a most painful effort to explain that he was to be allowed only ten per centum interest on his funds, (14, 20, 22, 109.) Also to the explanation made about the first agreement which was torn into fragments by Squier, but rescued by the assignee (24, 25, 26, 72.)

The impression created by the testimony of the defendant in his account of the transactions will, we think, be found to be unsatisfactory to the court.

The funds put into the concern by Edmonds gave it a fictitious credit upon which Squier was enabled to induce persons to put their money into his custody, and Edmonds, in equity, ought to be estopped from denying that he was a partner.

Squier had been receiving deposits as bankers are accustomed to do, and, as before stated, he was probably anxious to increase this trust fund. The fact that he kept up several bank accounts, and that large sums of money were in his banking house, which were

constantly being invested and re-invested, being constantly paid out and paid in, must necessarily have became known in the community, and persons may have been thereby induced to part with their money, who otherwise would not have done so. This was the natural result, and Edmonds is properly chargeable with knowledge of it. It is immaterial whether there were any such or not. The principle is the same, especially where a receiver appointed by the court, representing all the creditors, calls upon the dormant partner to respond as a partner. The firm name of "J. H. Squier & Co.," adopted by the parties, must have given additional assurance to the public that others besides Mr. Squier were engaged in the business.

It is submitted that the decree of the Court below should be reversed with costs, and the cause be remanded with directions to enter a decree requiring that the debts created by Squier or Squier & Co., subsequent to April 2, 1879, be ascertained, and that a money decree be entered against the defendant Edmonds, requiring him to pay such debts, after the application of the assets thereto, together with interest and cost.

ENOCH TOTTEN,
For Receiver.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 245.

JESSE B. WILSON, Receiver of J. H. Squier and Company,

APPELLANT,

vs.

JAMES B. EDMONDS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief For the Appellee.

NATH'L WILSON,
Of Counsel for Appellee.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE B. WILSON, RECEIVER OF J. H. SQUIER AND COMPANY, APPELLANT,

v.

JAMES B. EDMONDS.

No. 245.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR THE APPELLEE.

Pleadings and Decree Below.

This is an appeal from a decree of the Supreme Court of the District of Columbia dismissing the appellant's bill of complaint.

The bill seeks a discovery from the defendant as to his transactions with Squier & Co., and alleges that he has obtained and seeks to convert to his own use assets of the firm of Squier & Co., and that he was a member of

the firm, and as such liable for the firm's debts. The relief specially prayed for is—

1. That said Edmonds make full discovery of all his business transactions with the said J. H. Squier, and as to the moneys and vouchers paid to and received from said Squier.

2. That the court decree that the vouchers and securities delivered to the said Edmonds under an order of the court and the proceeds thereof be delivered to the complainant, the said receiver of J. H. Squier & Co., to be distributed among the creditors of the said firm of J. H. Squier & Co., and that the court declare that said securities or the proceeds of the sale thereof were the property of the said J. H. Squier & Co., which passed under said assignment for the benefit of his creditors.

3. That if it shall seem to the court that said Edmonds is not a partner in said firm, then that a decree may be entered against the said Edmonds for so much money as has been paid to him by said firm as illegal interest.

R., pp. 1 to 5.

The answer makes full discovery as to all matters inquired of by the bill. It denies that the defendant holds or claims any part of the assets of the firm of Squier & Co., and avers that the vouchers referred to therein were purchased with money loaned by the defendant for that purpose and were pledged to him as security for the loans so made.

It denies that he was or had ever been a partner in said firm, or in any way interested in its business, or responsible for its debts, and avers that at the time of the failure of the said firm he was a creditor of the firm as the holder of its notes for the sum of $44,000, on which there were to be credited certain payments, the precise amount of

which had not been then ascertained. It also avers that the notes bearing interest at 10 per cent., set forth in the answer, and the contract, Exhibit A (R., p. 11), providing that Squier & Co. might collect the securities as they mature and substitute others of like kind upon payment of a certain monthly sum to be applied on the notes, show the true relation between the parties.

R., pp. 5 to 12.

A replication having been filed, the complainant called as a witness the defendant, and examined him at length concerning the history and the details of his transactions with the firm of Squier & Co. and with Squier.

R., pp. 13 to 54.

The complainant also called as a witness Jay B. Smith, at one time a clerk in the service of Mr. Squier.

R., pp. 54 to 88.

The testimony of these witnesses, and the papers made thereby exhibits, constitute all the evidence adduced on behalf of the complainant pertinent to the issues in the case.

The defendant testified in his own behalf.

His testimony and the exhibits referred to by him, and the report of the auditor of the court showing the indebtedness of Squier & Co. at the time of the failure of the firm, constitute all the evidence adduced on behalf of the defendant.

R., pp. 102–114.

Amendment of Record, pp. 1 to 10.

On the hearing, the complainant's bill was dismissed by

Mr. Justice Cox, holding a special term of the Supreme Court of the District of Columbia in equity.

R., p. 122.

See printed opinion.

The decree dismissing the bill was affirmed by Chief-Justice Cartter and Justices James and Merrick, holding a general term.

R., p. 123.

No opinion was filed.

The cause is brought here by an appeal from the decree last mentioned.

R., p. 123.

STATEMENT.

The alleged liability of the defendant as a partner in the firm of J. H. Squier & Co. is not derived from any oral or written agreement of partnership. It is not pretended that the defendant ever represented himself to be a member of that firm, or that any one of the creditors were ever informed or even supposed that he was a member of the firm, or gave credit to, or had dealings with the firm with the understanding or belief that he was a partner.

The defendant testifies "that there was no talk of any "co-partnership, and there was no understanding or "thought or arrangement of anything of the kind."

"I never shared in the profits of any of his transactions "that he had, and I suppose they amounted to hundreds "of thousands of dollars."

R., p. 51.

"I never examined a book of his and never had an oc-"casion to. I did not know anything about his affairs. "I was an absolute stranger to them."

R., p. 16.

If a partnership existed it did not exist in pursuance of any intention of its members, but as a conclusion of law from the transactions and course of dealing shown by the record.

In 1879 Mr. Squier was a banker and broker in Washington, using the firm name of J. H. Squier & Co.

The general character and scope of his business as represented to the defendant and to the public are shown by the printed headings of the paper used for his correspondence and his business cards.

"Gold, Government, railroad, and corporation bonds
"bought and sold at market rates; six per cent. interest
"paid on deposits payable on demand; special rates on
"time deposits; interest paid or credited January and July;
"pay of officers in the army cashed in advance; navy al-
"lotments purchased; drafts on New York given and taken
"at par; letters of credit to travellers in Europe issued;
"collections made everywhere.
"Banking-house of J. H. Squier & Co., No. 1416 Penn-
"sylvania avenue."

Amendment to Record, p. 1.

He had been engaged in this business since 1868, more than ten years before the defendant made his acquaintance.

R., pp. 42, 83 and 84.

In April, 1879, Squier applied to the defendant for a loan of money to be used in the purchase of vouchers.

R., p. 14.

Between the 3d of April, 1879, and the 3d of March, 1882, the defendant, as appeared from the books of Squier & Co., advanced $44,000 to Squier, and between the 1st of May, 1879, and May 31, 1884, the defendant received from him $29,050.75.

The dates and amounts of these payments and receipts are shown by the schedule on page 57 of the record.

The defendant testifies that his advances amounted to between $47,000 and $48,000, of which $40,000 was paid by the defendant's checks on Riggs & Co. and Gilman Sons & Co., and the balance in checks of Squier & Co., given for monthly balance payments, or the checks of other people, or cash that the defendant happened to have on hand.

R., pp. 12, 16, and 27.

When the first advance of $2,000 was made, vouchers for that amount were placed in the hands of the defendant, and Squier gave his note for the amount, bearing ten per cent interest.

The defendant continued to make advances, receiving pay-vouchers and the notes of Squier for the various sums so advanced until they amounted to between fifteen and twenty-five thousand dollars.

Up to that time there had been no written agreement between the defendant and Squier other than the notes.

By reason of some rule adopted by one of the Departments it became necessary to send some of the vouchers held by the defendant away for collection, and Squier asked that they be given him for collection and that others might be substituted in their place.

It therefore became necessary that there should be some memorandum to show that the vouchers held by the defendant had been purchased with his money, and that he was entitled to the proceeds thereof, and to any vouchers and the proceeds of vouchers substituted for them.

Such a memorandum was made.

R., pp. 43, 44, and 47.

In September, 1880, the advances made up to that time

amounted to $34,000, and the paper was prepared and signed, which appears in the record at p. 25.

The defendant testifies that it was not delivered and did go into effect, as Mr. Squier objected to it that it did not provide for the application to the notes of the moneys received after the payment of the stipulated interest. It was laid aside and another drawn.

R., pp. 25 and 26.

On the 1st of August, 1883, another agreement was made, which is in evidence.

R., pp. 18 and 19.

This paper correctly describes the understanding with which the business between the defendant and Squier was conducted. It was simply this:

The money loaned by the defendant to Squier & Co., for which notes were given, was to be invested in vouchers, which were to be bought at a rate to net the profit designated in the agreement, but this profit was not and was not intended to be a profit to the defendant, for it was expressly provided in the agreement that all moneys collected by Edmonds "*should be credited to said Squier* & "*Co. on said notes.*"

All that the defendant could receive under said agreement was the amount of the notes with ten per cent. interest, and all sums received by him in excess were to be applied to extinguish the notes.

When Squier & Co. failed in June, 1884, the defendant held the notes described in the agreement of August, 1883.

One note, dated August 1, 1883, was for $4,000, payable in three months after date, with interest at the rate of ten per cent. per annum until paid. The other note bearing

the same date and rate of interest was for $40,000, payable in six months after date.

R., p. 21.

At that time he held as security for the payment of these notes "pay-vouchers," as they are termed, of the face or nominal value of $28,443.

R., pp. 6 and 42.

These vouchers were in the defendant's safe in the place of business of Squier & Co., where they had been deposited for safe keeping, and after the failure the defendant was allowed to take them by the order of the court.

R., p. 42.

If the defendant had received and was properly chargeable with the full face value of these vouchers there would still have been due in respect of the notes, exclusive of interest, $15,557.

But, in fact, the defendant did not receive $28,443 from or in respect of the vouchers. At the time of the hearing he had collected from the vouchers only $15,390.26. Vouchers of the face value of $8,951.32 were fraudulent or of no value, and other vouchers of the face value of $4,000 remained in his hands uncollected and of doubtful value.

R., pp. 48 and 106.

If the defendant were chargeable with the amount collected, and also the face value of the doubtful and uncollected vouchers, the total amount so chargeable against him would be but $19,390, which would leave still due in respect of the notes over $24,000, exclusive of interest.

It is true that the notes did not represent the exact amount due to the defendant at the time they bear date. The defendant testifies that Squier & Co. were entitled to

some credits, the exact amount of which had not been ascertained.

R., pp. 20, 21, and 49.

The defendant afterwards ascertained that the precise sum then due was the face of the notes, $44,000 less $4,160, that is to say $39,840.

R., p. 109.

Of this amount there is still due and unpaid, after deducting the money received from vouchers and the face value of doubtful vouchers, over $20,000.

Without reference to the notes and independent of them it is shown that the total amount of money advanced by the defendant to Squier & Co. was between $47,000 and $48,000. The payment of $44,000 at various times between April 2, 1879, and March 3, 1882, is shown by the books of Squier & Co.

R., p. 57.

The defendant testifies that the balance was made up by cash and a small portion by checks that were paid to him by Squier.

R., p. 27.

There is no dispute or question as to the sums received by the defendant from Squier & Co. Prior to the failure he had received in cash..... $29,050 00

R., p. 58.

After the failure he received from vouchers... 15,390 00

Total..... $44,440 00

If there be added to this and charged to the defendant the face value of the doubtful vouchers..... 4,000 00

the total is..... $48,400 00

This is very little more than the amount of the moneys advanced, wholly exclusive of interest.

It is incontrovertible therefore that, from whatever point of view the transactions of the defendant with Squier & Co. be regarded, he has not received back the money that he is out of pocket with even six per cent. interest, and that, according to the terms of his contract, reckoning interest at the rate of ten per cent. per annum as he had a right to reckon it, there is still due him over $20,000.

Notwithstanding this loss the complainant seeks to charge him with the other indebtedness of Squier & Co., amounting to not less than $100,000, due in part to creditors who had money on deposit with Squier & Co., bearing interest at rates varying from six to twelve per cent.

See Amend. to Record.

Concerning the statements of facts contained in the appellant's brief, it is to be remarked that it is in a great measure based upon theories and inferences that are derived by the witness Smith from an examination of the books of Squier & Co.

It does not affect the issues in the case or cast any doubt upon the salient and material facts upon which the defendant relies for protection against the liability sought to be enforced against him.

Argument.

The brief of the learned counsel for the appellant presents no considerations relative to the relief specifically prayed for in the bill.

It is not urged that the complainant is entitled to the vouchers or the proceeds of the vouchers described in the bill of complaint.

It is not urged that the complainant is entitled to a decree for any money paid to the defendant as illegal interest or to a reference to ascertain if any illegal interest has been paid.

By the Revised Statutes of the United States relating to the District of Columbia, it is provided that persons may contract to receive a rate of interest not greater than ten per cent., and that suits to recover back unlawful interest must be brought within one year after such unlawful interest has been paid.

Rev. Stats. D. C., sec. 716.

It is not urged that the complainant is entitled to any fuller discovery than that given by the answer.

The sole purpose of the complainant's argument is to show that the court below erred in refusing to hold that the defendant was a member of the firm of Squier & Co. and chargeable with its debts.

It might with great force be claimed that, as this is not the relief prayed for, and the bill does not ask judgment for any sum due to Squier & Co.'s creditors, it must be considered merely as one of discovery, and should have been dismissed when the answer denied the matters sought to be proven by defendant's oath.

Brown *v.* Swann, 10 Pet., 502–3.

Russell *v.* Clark, 7 Cranch, 69, 89.

But, without further reference to these objections, we submit the following points:

I.

THE RELATIONS BETWEEN THE DEFENDANT AND SQUIER WERE THOSE OF LENDER AND BORROWER.

The borrower did nothing more than agree to make a

small monthly payment that would indemnify the lender in case of the loss of any voucher by reason of the death or dismissal of an officer, whose voucher would in that event become worthless.

On account of that risk, as is well known, bankers' discounts of such securities are very large. Because these monthly payments were partly for interest and partly for principal, and all were earned with the money loaned by defendant, Squier sometimes called such payment "dividends" (p. 119). It matters not what the payments were called as the transaction was one of lending, evidenced by promissory notes, even though profits in excess of lawful interest were stipulated for and security given for the payment thereof.

Colton *v.* Durham, 2 Paige Ch., 267.
Cooper *v.* Tappan, 9 Wis., 362.
Eager *v.* Crawford, 76 N. Y., 97.

In the case last cited the stipulation was for repayment of the money and interest and one-fourth of the monthly profits of the business, for which purpose accounts were to be kept, and a chattel mortgage was given to secure the whole. Here were "profits" expressly bargained for and a lien given therefor. Yet it was decided to be merely a stipulation for compensation and security, and not a partnership in the business.

In Morell *v.* Spurr (143 Mass., 257) the negotiation began for a partnership, but the lender advanced the money as a loan with the right to elect to become a partner. Such election was made and assented to. Yet the note was retained and the profits applied thereon, and it was held that continuing the debt defeated the supposed partnership.

In this case there was no thought of a partnership,

and the monthly payments were invariably applied on the debt, and because of such reduction the amount of securities was reduced (p. 18).

II.

THE RELATION OF DEBTOR AND CREDITOR (EVIDENCED ONLY BY PROMISSORY NOTES AND PLEDGED COLLATERALS) WERE NOT CHANGED BY THE SUBSEQUENT CONTRACT RESPECTING THE COLLATERALS.

Prior to such contract the pay-vouchers were payable at Washington, and Squier & Co. brought unmatured vouchers and exchanged them for those that had matured. Defendant parted with no security without simultaneously taking an equivalent.

This mode of exchange was rendered practically impossible by a change of Department order requiring pay-vouchers to be collected where the officer served, for which purpose it must be sent to distant points, and so required some days to get returns. It required correspondents such as bankers.

Squier & Co. asked that they be entrusted to make such collections. Ordinarily if the pledgee gives up possession of the pledge he loses his rights, unless by special contract the lien or title is continued.

Gregory *v.* Morris, 96 U. S., 619, 623.
Hauselt *v.* Harrison, 105 U. S., 401, 405.
Casey *v.* Cavaroc, 96 U. S., 467, 480.
Clarke *v.* Iselin, 21 Wall., 360.

But with the rights of the pledgee secured by special contract he may employ the pledgor to make collections and procure substituted securities.

Such contract may be in any form, absolute conveyance, mortgage, or other acknowledgment of title or lien, and

any evidence written or oral is admissible to show the real character of the transaction.

Peugh *v.* Davis, 96 U. S., 332, 336, 7.
Russell *v.* Southard, 12 How., 139, 147.

Any conveyance or acknowledgment of title to secure the payment of money is in equity a mortgage, and the creditor may enforce his debt and ask foreclosure and the debtor may redeem.

Hughes *v.* Edwards, 9 Wheat., 489.
Babcock *v.* Wyman, 19 How., 289.
Shillabee *v.* Robinson, 97 U. S., 68.

In such cases "the form of the instrument is immaterial," and an absolute deed will be held in equity as a continuing mortgage when the intention is to secure a debt.

Villa *v.* Rodriguez, 12 Wall., 323.

In this case it matters not whether the contract be that on page 11–18 or the one on page 25, for in either case the notes were renewed and referred to in the contract, and the contract itself promises a return of the money.

They each refer to a debt already existing and to vouchers already pledged and in possession of the lender.

The contract, like the vouchers to which it refers, was collateral to the debt and only made to meet the new exigency that had arisen and to enable the pledgee to make use of the services of the pledgor as banker and broker.

If Squier & Co. were really insolvent, as is argued, they had the right to exchange values and to give securities for money borrowed, or exchange one voucher for another.

Clark *v.* Iselin, 21 Wall., 360.
Cook *v.* Tullis, 18 Wall., 332.

And the assignee, or receiver in his place, takes the estate of the assignor in the same plight and subject to all the equities and incumbrances, whether by operation of law or the act of the insolvent, that existed when in the hands of the latter.

Stewart *v.* Platt, 101 U. S., 731, 738–9.
Donaldson *v.* Farwell, 93 U. S., 631.

And a pledgee may hold the pledge the same as though there were no assignment.

Jerome *v.* McCarter, 94 U. S., 334.
Yeatman *v.* Sav. B'k, 95 U. S., 764.

III.

BUT SUPPOSE, FOR ARGUMENT'S SAKE, THAT THE CONTRACT REFERRED TO TOTALLY CHANGED THE RELATION OF THE PARTIES IN EQUITY. THEN DEFENDANT INSTEAD OF A CREDITOR BECAME THE PROPRIETOR OF THE VOUCHERS HELD BY HIM, THE SAME HAVING BEEN PURCHASED FOR HIM BY HIS BROKERS, SQUIER & CO.

The agreement then is, that the broker may, from time to time, collect the matured vouchers and reinvest the proceeds in other securities of like kind provided he can make purchases so as to yield a certain profit to the owner. It also guarantees the genuineness of the securities and ultimate return of the money, for which services the broker may retain all profits in excess of interest.

Such a contract does not create a partnership between the parties, *even as to the vouchers.* Much less does it as to all the banking and brokerage business of Squier & Co.

The law as recognized by this Court, and by the later decisions of nearly if not quite all of the States, and of England, too, is that *to share in the profits of a business or ven-*

ture as compensation for the use of money or other property or for personal services, or partly for each, does not create a partnership.

In the case of Seymour *v.* Freer (8 Wall., 202, 215), Price was to contribute his time, labor, skill, and judgment, and pay his own expenses in looking up and purchasing lands; Seymour was to advance money and pay for them, take title and resell the same and be repaid his advances and interest, and one-half of the net profits; Price to have the other half. This Court say:

"It is insisted that the contract made the parties co-
" partners in respect to the lands to be bought. We can-
" not adopt this view of the subject. The adjudications
" which bear upon it are conflicting and irreconcilable.
" The case of Berthold *v.* Goldsmith (24 How., 536) is
" conclusive in this forum against the proposition."

While the majority of the Court were content to rest its decision upon the case cited without examination of the reasons, Justices Field, Nelson, and Grier conclude, upon an examination of American and English authorities, that sharing profits between services and capital gives an interest in the latter, or creates a partnership only when the services are considered as equivalent to the capital employed (p. 224).

This view seems to have been adopted in the later case of Beckwith *v.* Talbot (95 U. S., 289), where a herd of cattle (the cash value of which being agreed upon) was delivered to herdsmen to maintain for two years and upwards, then to be sold, and the profits over the original valuation were to be shared by both parties.

This Court held there was no partnership, there being no community of interest in the capital employed, and that those who were to be paid by a portion of the profits were employés and not proprietors (p. 293).

Such also is the recent decision in Dale *v.* Pierce (85 Pa. St., 474), where money was furnished to a butcher to invest in cattle for slaughter, both parties sharing in the profits after repayment of the sum advanced.

This doctrine is affirmed and illustrated by too many cases to leave a doubt as to their effect. In Richardson *v.* Hughitt (76 N. Y., 55) the latter advanced money to build wagons for sale upon an agreement to be repaid his money and interest and one-fourth of the net profits, the wagons being transferred to him as security for the whole. It is held not to be a partnership, but only an arrangement to secure the loan and make compensation therefor.

In Curry *v.* Fowler (87 N. Y., 33, 38) $50,000 were advanced for the purchase and improvement of property for resale, upon an agreement that the money should be refunded with interest and one-half of the profits, which should not be less than $12,500, all of which was secured by a mortgage on the property. Held not a partnership.

Macgovern *v.* Robertson (47 Hun., 166) and Cassidy *v.* Hall (97 N. Y., 159, 168) are to the same effect, the court, in the last case, saying it is well settled that one does not become a partner by being interested in the profits of a business as a means of compensation for services or money.

In Harvey *v.* Childs (28 O. St., 319) the latter advanced money to Potter, a dealer in hogs, to purchase two carloads of hogs, upon the agreement that Childs was to take possession of the hogs and sell them, and out of the proceeds be repaid his advances and one-half of the net profits. Potter kept the money or put it to other use, and purchased the hogs of plaintiff on credit and delivered them to Childs. Held there was no partnership, and that Childs was not liable to Harvey for the purchase-money.

In Lintner *v.* Milliken (47 Ill., 178, 183) one advanced money to manufacture implements, as many and for such length of time as might be deemed profitable, the advances to be returned and one-third of the profits. Held not to be a partnership, but only a mode of getting compensation for money that was quite common.

In Adams *v.* Funk (53 Ill., 219) money was advanced to buy cattle for the market upon the agreement that the money was to be returned with interest, and one-half of the profits.

In Smith *v.* Knight (71 Ill., 148) money was advanced under an agreement to receive interest and one-half of the net profits, and be responsible for all losses.

In Boston Smelting Co. *v.* Smith (13 R. I., 27), by an agreement under seal, B was to advance money and indorse notes for A's business. B to have ten per cent. and a certain proportion of the net profits. A to keep accurate accounts for B's inspection. Held, as in the two preceding cases, that there was no partnership as between themselves or as to others.

Decisions in the following cases are to the same effect.

Williams *v.* Soutter, 7 Iowa, 436, 445 6.
Ruddick *v.* Otis & Snow, 33 Iowa, 402.
Hart *v.* Keeley, 83 Pa. St., 286, 290.
Wells *v.* Babcock, 56 Mich., 276.
Beecher *v.* Bush, 45 Mich., 188, 196.
Buzard *v.* Bank, 67 Tex., 84.
Rice *v.* Austin, 17 Mass., 206.
Meehan *v.* Valentine, 29 Fed. Rep., 276.
Moore *v.* Walton, 9 Nat'l Bank Reg., 402.

In deciding the case of Turner *v.* Bissell (14 Pick., 192) the court say that parties shipping goods to India to be converted into a return cargo for half of the profits of the

transaction do not become partners with the shipowner, nor is the return cargo liable for the debts of the latter.

In Rice *v.* Austin (17 Mass., 206), money instead of goods was advanced upon a like agreement for investment in a cargo of lumber, the money to be returned and the profits divided.

The foregoing cases relate mostly to instances where money was advanced with the stipulation that it be returned and that profits were to be shared either in lieu of or in addition to interest, the person making the advances usually taking a lien upon or title to the property purchased with the money advanced, and as security therefor taking what appellant's brief calls "profits with a "lien therefor." Of what avail was defendants lien on proceeds of vouchers collected by Squier & Co.?

The following additional cases illustrate the universality of the rule that sharing in profits, net or gross, does not constitute a partnership, whether as compensation for money or for personal services or the use of property.

Barter *v* Rodman, 3 Pick., 435.
Cutler *v.* Wisnor, 6 Pick., 335.
Denny *v.* Cabot, 6 Met., 82.
Bradley *v.* White, 10 Met., 303.
Monroe *v.* Greenhoe, 54 Mich., 9.
Thayer *v.* Augustine, 55 Mich., 187.
Colwell *v.* Britton, 59 Mich., 350.
Vanderburg *v.* Hall, 20 Wend., 70.
Reed *v.* Murphy, 2 Greene (Ia.), 574.
Kelsey *v.* State, 58 Ind., 319.
Bryce *v.* Bundy, 61 Ind., 432.
Eastman *v.* Clarke, 53 N. H., 276.
Kellogg *v.* News Co., 88 Mo., 594.
Clifton *v.* Howard, 89 Mo., 192.
Cully *v.* Edwards, 44 Ark., 424, 428.

Polk *v.* Buchanan, 5 Sneed, 721.
Dwinell *v.* Stone, 30 Me., 384.
Millett *v.* Holt, 60 Me., 169.
Darron *v.* St. George, 8 Col., 892.
Perchen *v.* Anderson, 5 Mont., 438.
Nicholas *v.* Thieleg, 50 Wis., 491.
Pond *v.* Comrs., 50 Conn., 372.
Nutting *v.* Colt, 3 Halst., 509.
Dills *v.* Bridge, 23 W. Va., 20.
Setzer *v.* Beale, 19 W. Va., 274.
Sediker *v.* Applegate, 24 W. Va., 412.
Crawford *v.* Austin, 34 Md., 49.
Sangster v. Hack, 52 Md., 173.
Redington *v.* Lanahan, 59 Md., 429.
Horan *v.* Hall, 1 B. Mon., 159.
Day *v.* Stevens, 88 N. C., 83, 87; 3 Kent's Com., 24.

The old cases of Grace *v.* Smith (2 W. Bl., 998), Waugh *v.* Graves (2 H. Bl., 247), and others that sanctioned a different doctrine, have been overruled by all the more recent English cases as an incorrect exposition of the common law.

Cox *v.* Hickman, 8 Ho. of Lords Cas., 268.
Bullen *v.* Sharp, L. R., 1 C. P., 86, 112, 118.
Holme *v.* Hammond, L. R., 8 Exch., 218.
Moelwo *v.* Ct. of Wards, L. R., 4 P. C., 419, 435.
Kelshaw *v.* Jukes, 3 Best & Sm., 847.
Easterbrook *v.* Barker, L. R., 6 C. P., 113.
Shaw *v.* Galt, Irish L. R., N. S., 16 C. L., 357, 375.

These decisions are generally hailed in this country as uprooting a pernicious theory sought to be introduced into the law of partnership. See cases cited *supra*, 47 Hun., 166, 170; 45 Mich., 188, 196; 13 R. I., 27, 67; 67 Tex.,

84; 44 Ark., 424, 428; 83 Pa. St., 286, 290; 5 Mont., 438.)

IV.

A PARTNERSHIP WILL NOT BE INFERRED WHERE THERE IS NO PROVISION FOR A COMMUNITY OF LOSSES AS WELL AS PROFITS.

Holmes *v.* R.R. Co., 5 Gray, 58.
Lamont *v.* Fullam, 133 Mass., 583.
Post *v.* Kimberley, 9 John., 470, 504.
Porter *v.* McClure, 15 Wend., 187.
Holbrook *v.* Oberne, 56 Iowa, 324.
Beckwith *v.* Talbot, 2 Colo., 639.
Wheeler *v.* Farmer, 38 Cal., 203, 213.
Flint *v.* Marble, 53 Vt., 669.
Gill *v.* Fern, 82 Mo., 156.
Chaffraix *v.* Lafitte, 30 La. An., 631, 639.
Chapman *v.* Lipscomb, 18 S. C., 223.
McCram *v.* Laughton, 58 Ala., 230.
Robinson *v.* Bulllock, *Id.*, 618.
Houze *v.* Patterson, 53 *Il.*, 205; 36 Ala., 61; 19 *Id.*, 774.

This Court recognizes this principle in the case cited by appellant, Beauregard *v.* Case (91 U. S., 134). In that case there was an express agreement of partnership and an agreement to share both losses and profits (pp. 136–7). This Court say: "Here were the essential conditions of "partnership, union of services and money, and a division "of profits and losses" (p. 140).

V.

THESE "ESSENTIAL CONDITIONS" OF SHARING BOTH LOSSES AND PROFITS MAY EXIST AND STILL THERE BE NO PARTNERSHIP,

IF SUCH WAS NOT THE INTENTION TO BE GATHERED FROM ALL THE WORDS, ACTS, AND PURPOSES OF THE PARTIES.

Taylor *v.* Bush, 75 Ala., 433, 6.
Kellogg News Co. *v.* Farrell, 88 Mo., 594.
Clifton *v.* Howard, 89 Mo., 192.
Dunnell *v.* Hasche, 67 Mo., 170.
Musser *v.* Buick, 68 Mo., 242.
Same *v.* same, 80 Mo., 350.
McDonald *v.* Matsey, 82 Mo., 358, 365.
Burnett *v.* Snyder, 76 N. Y., 344.
Dwinell *v.* Stone, 30 Me., 384.
Alfaro *v.* De la Torre, High Ct. of Ch., 24 Weekly Reps., 510.
Walker *v.* Hirsch, L. R., 27; Ch. Div., 460.
Nicholson *v.* Ricketts, 2 Ell. & Ell., 524.
Chaffaix *v.* Lafitte, 30 La An., 631, 639.

In the case last cited the Court say that participation of profits is one circumstance, participation in losses is another. The first is not sufficient, and an agreement for both is not conclusive (p. 639).

If looking at the whole agreement no partnership was contemplated, none was established.

London Ass. Co. *v.* Drennen, 116 U. S., 461.
Same *v.* same, 113 U. S., 51.
Muzzy *v.* Whitney, 10 John., 226.
Beckwith *v.* Farmer, 38 Cal., 203, 213.
Ins. Co. *v.* R.R. Co., 104 U. S., 140, 158.

If mercantile men in making a written agreement meant to be partners it is to be supposed they would say so.

Ross *v.* Parkins, L. R., 20; Eq., 331, 335.

VI.

IT RESULTS AS A COROLLARY FROM THE FOREGOING PROPOSITION THAT THE CREDITOR OF ONE INTERESTED ONLY IN THE PROFITS CANNOT TAKE IN EXECUTION, OR IN ANY WAY CLAIM FOR DEBT, THE PROPERTY CONTRIBUTED BY ANOTHER ALSO INTERESTED IN THE PROFITS, FOR THERE IS NO JOINT PROPRIETORSHIP AND NO PARTNERSHIP.

Porter *v.* McClure, 15 Wend., 187.
Chase *v.* Banett, 4 Paige Ch., 148.
Dale *v.* Pierce, 85 Pa. St., 474.
Blanchard *v.* Coolidge, 22 Pick., 151.
Beckwith *v.* Talbot, 2 Colo., 639.
Dwinell *v.* Stone, 30 Me., 384.
Beckwith *v.* Talbot, 95 U. S., 289, 293.

This is held to be true, although the agreement was to share both losses and profits.

Alfano *v.* De la Torre, 23 Weekly Rep., 510.

For all the foregoing reasons it is evident that defendant and Squier & Co. were not partners, even in the transaction of vouchers, to which alone the contract relates.

This relation was necessarily that of creditor and debtor, as it began, and as the parties invariably understood it. Else it was changed to that of employer and employé with regard to a particular investment, as in the cases 24 How., 536; 8 Wall., 202; 95 U. S., 289, and the others cited.

VII.

BUT SUPPOSE AGAIN, FOR ARGUMENT'S SAKE, THAT TECHNICALLY THE CONTRACT CONCERNING THE COLLECTION AND SUBSTITUTION OF VOUCHERS CONSITUTED THE PARTIES PARTNERS. IT WAS THEN A PARTNERSHIP FOR THAT PURPOSE ONLY; THAT

IS, TO USE MONEY IN THE BROKER'S HANDS TO PURCHASE A CERTAIN SECURITY FOR DELIVERY, THE BROKER KEEPING ALL PROFIT OVER A CERTAIN AMOUNT FOR HIS SERVICES AND A GUARANTY OF PAYMENT.

Here was no authority to incur a debt, but only authority to purchase with the money delivered for that purpose. If a man hands to a broker a sum of money with which to purchase that amount of securities, it does not, because he is to keep a portion of the discount for his service, authorize him to incur a debt. Partnership is recognized as a branch of the law of agency. See Cox *v.* Hickman (8 Ho. of Lords); Eastman *v.* Clark (53 N. H., *supra*), and Irwin *v.* Williar (110 U. S., 499, 505).

All partnerships are necessarily limited. The limitations are found in the written agreement, if there be one, or, if there be none, in the general usage of the parties.

Kimbro *v.* Bullitt, 22 How., 256, 267.

When the fact of partnership is not known to those giving credit, there is no liability of the unknown partner beyond the actual scope of the partnership. This is elementary.

The case of Nicholson *v.* Ricketts (2 Ell. & Ell., 497, 524) illustrates the rule. One partner in Buenos Ayres was authorized to draw bills for particular purposes upon the other in London.

A bill for another purpose was drawn in favor of one who had no knowledge of the partnership. The court held the London partner was not liable, saying: "The existence "and purpose of this partnership were unknown to the "world. The question, then, is one of express authority" (p. 524).

To same effect see Kilshaw *v.* Jukes, 3 Best. & Sm., 847.

Chaffraix *v.* Lafitte, 30 La. An., 631, 639.

Where a partnership exists and is known, but where there is no common purpose to deal on credit, and no debt is contemplated, neither partner is liable for any debt incurred by the other, even though the firm name be used and the money be applied to its use.

Harvey *v.* Childs, 28 O. St., 319, 323, 4.
Peterson *v.* Roach, 32 O. St., 374.
Todd *v.* Emly, 7 Mees. & Wels., 427, 433, 5.

Even where the common purpose is to deal upon credit and incur debt one partner cannot involve the other in transactions outside of the actual or apparent business.

Salem Bk. *v.* Thomas, 47 N. Y., 15.
Natl. Bk. *v.* Underhill, 102 N. Y., 336.
Morgan *v.* Pierce, 59 Miss., 210.
Pickles *v.* McPherson, *Id.*, 216.
Cadwalader *v.* Kroeven, 22 Md., 200.
Woodward *v.* Winship, 12 Pick., 430.
3 Ala., 175; 8 Ala., 59; 8 Neb., 186; 35 Neb., 229.

Therefore if the contract in question concerning the vouchers created a technical partnership it contemplated no debt, but only a purchase with money delivered therefor, nor was any debt in fact incurred on that account. It is absurd to argue that if a man advances money to a banker and broker for a special venture, to participate, let us suppose, in both profits and losses and not as a loan, that thereby they become partners in the general banking and brokerage business, and holden alike for all other ventures and transactions of the banker and broker, including liability for bank deposits.

In the case of Hesion *v.* Julian (82 Ind., 576) one L. agreed with a law firm (J. & J.) to procure all the cases he could and help prepare them for trial. J. & J. were to

manage the cases, including the trial, and all were to divide the earnings.

It was decided that this written contract did not make L. a general partner of J. & J., nor liable for their debts.

L. in that case, like the defendant in the case at bar, had no control over the general business of the other party, nor was he entitled to share in the profits of such general business, and therefore incurred no responsibility in that respect, and so this Court holds in the case of

Pleasants *v.* Fant, 22 Wall., 116, 120.

VIII.

WE RESPECTFULLY SUBMIT THAT THERE WAS IN THIS CASE NO GENERAL OR SPECIAL PARTNERSHIP, AND NO RELATION SAVE THAT OF LENDER AND BORROWER, AS IT WAS ALWAYS UNDERSTOOD AND INTERPRETED BY THE PARTIES, AND THAT THE CONTRACT IN RELATION TO THE SECURITIES WAS ONLY COLLATERAL TO THE LOAN AND TO ACCOMMODATE THE CONVENIENCE OF THE PARTIES, AND DID NOT ALTER THE NATURE OF THE TRANSACTION.

The decision of the Court below should be affirmed with costs.

NATH'L WILSON,
of Counsel for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 245.

JESSE B. WILSON, Receiver of J. H. Squier and Company,

APPELLANT,

vs.

JAMES B. EDMONDS.

Appeal from the Supreme Court of the District of Columbia.

OPINION OF MR. JUSTICE COX,

Holding a Special Term in Equity of the Supreme Court of the District of Columbia.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

IN THE

Supreme Court of the District of Columbia.

JESSE B. WILSON, Receiver, &c.,

v.

JAMES B. EDMONDS.

In Equity.
No. 9,245.

Opinion of the Court, in Special Term, Hon. Walter S. Cox, Presiding:

I have carefully examined the brief which was filed by counsel on behalf of the complainant, and have listened very attentively to the oral arguments of counsel representing both parties. I have not been able to discover any great mystery or difficulty about the case.

The theory of the bill in this case is that the defendant Edmonds was a general partner of Squier, and is called upon to account as such. The defendant Edmonds in his answer claims that he was simply a creditor; that he had from time to time loaned money to Squier, on which he was to receive a certain interest, and that that was the only relation he had with Squier.

The complainant produced in evidence two written papers, the agreements between these parties, Squier and Edmonds, under which the complainant claims these parties act. The latter one of these agreements bears date August 1, 1883,

and is admitted by Mr. Edmonds to have been in full force. I believe he does not admit that to be the case with the one dated September 1, 1880. These two agreements are substantially the same, except as to the amount of interest and profits. The evidence as to the conduct of the parties in the course of business, the dealing between them, is supplied by the books of the company, the checks, receipts, &c., and it very strongly proves that the business from the beginning throughout was such as is indicated by these papers.

Mr. Edmonds in his testimony undertakes to prove an agreement prior to August, 1883, which is quite different from the one of that date. It is admitted by him to have been executed by both parties. It does not seem to me that the parol testimony on this subject is material, because it tends to vary the terms of a written contract. Beyond that, the weight of the evidence strongly affirms the agreement between them.

Now, the argument printed on the part of the complainant is an exceedingly able one, and tends very strongly to establish the relation of partnership between these parties as to this particular venture or investment of this money in these securities, and in fact it shows some of the very essential elements of partnership, one being that this was carried on for the benefit of Mr. Edmonds, Mr. Squier being the agent, a large part going to Mr. Edmonds and a small portion to Mr. Squier. But the query with me from the beginning has been (and I have not yet been able to answer it), how this contract between Mr. Edmonds and Mr. Squier has connected Mr. Edmonds with the general business of Mr. Squier. If this money had been advanced by Mr. Edmonds to Squier & Co., to be embarked in the general business of Squier & Co., with a stipulation that a certain profit was to be paid to Mr. Edmonds out

of that general business, the argument would have great force in regard to the theory of general partnership.

But what is the contract? The contract is that in consideration of a certain amount of money placed in the hands of Squier he will purchase a certain class of securities for Edmonds, which securities are not to be mingled up with the general business of Squier & Co. at all, but placed in the possession of Edmonds, and held by him. It could not be more separate from the general business of Squier & Co.

By the contract, the securities are to be deposited in the hands of Mr. Edmonds. But the most important feature of the whole matter is that the contract in express terms contemplates no profits to be received by Mr. Edmonds, except from this particular venture. By the terms of the agreement of September 1, 1880, the arrangement was to last so long as these pay vouchers could be bought so as to yield "a monthly profit of two per cent. or more." The agreement of August 1, 1883, recites that—

"Jas. B. Edmonds has delivered to J. H. Squier & Co. "$44,000 for investment by the latter for the former in "the purchase of pay vouchers, payable not later than six "months from date of purchase, of officers in the army, "navy, or civil service of the United States, and for rein- "vestment upon collection by said Squier in same kind of "securities, but not unless they are purchased so as to yield "said Edmonds a net profit of one and one-fourth per "cent. per month on $40,000, and one per cent. per month "on the $4,000, and enough besides to pay Squier & Co. "for their services and for guaranteeing prompt payment "of the vouchers."

In other words, the property which Mr. Edmonds' money was to buy was to be bought at that rate, and the property placed in his hands was to be worth more than he paid for

it. The profit to Edmonds was to be derived from the identical securities which his money bought, and from nothing else.

I appreciate the argument which was made that if Mr. Edmonds' money went into the general cash account of Squier & Co. that, therefore, the profits that were produced to Edmonds were out of the general business. It amounts simply to this: If I present money to a broker to derive a profit, and he pay the money which I have deposited with him for the purchase of certain securities out of the general cash account, I derive a profit out of his business, and I am clearly a partner.

It was Mr. Edmonds' money that was paid for the securities. In all cases where customers deal with brokers all the deposits go to the general cash account; they are not kept as separate deposits; and the application of those deposits in carrying out the orders of the customer, he sharing the profits with the broker, does not make the customer a partner; it is simply paying the debts of a creditor. The mere fact that a debt is paid from the general funds of a concern does not make the party to whom the debt is paid a partner of the concern. Such a proposition could not be maintained for a moment.

In the printed argument another circumstance was supposed to have some weight upon that point; and that is, by one of these stipulations in both of these contracts, when one of these vouchers matured and was ready for collection, Mr. Edmonds was to receive from Mr. Squier another voucher of an equal amount, of the same kind. It was said that that voucher was to be bought by the money of other customers.

In the first place, that does not follow. It does not suppose that the whole amount advanced by Mr. Edmonds could be invested in one lump. There was no time when

some of this money was not invested and in the hands of Squier & Co. When one voucher was returned, it was stipulated that Mr. Squier should buy another one and deposit it with Mr. Edmonds. If it should have happened at the maturity of a voucher that there was no money of Mr. Edmonds' in the hands of Mr. Squier, and he should have bought the voucher out of his own money, that would not have amounted to a participation in the profits of the business of Mr. Squier. It would have been simply buying the voucher out of his own money, taking it to Mr. Edmonds, and reimbursing himself. It would have been no application of the profits from the business of Mr. Squier.

Now, then, I do not see how this transaction connects Mr. Edmonds with the general business of Mr. Squier; for very clearly, by the force of this contract, Mr. Edmonds was not to be entitled to any profits derived from any other business but this particular venture. It did not interfere with any other business or any other customer of Mr. Squier. And I should remark, in reference to what I was considering, that these vouchers could have been bought by other money than that of Mr. Edmonds. The fact turns out to be that the whole of Mr. Edmonds' money was not devoted to this. There was a surplus, and Mr. Squier was indebted to Mr. Edmonds. His money has rather gone to other parties or to Mr. Squier himself.

In regard to the fact that was alleged in the course of the argument that this money of Mr. Edmonds' constituted the principal capital in the business of Squier & Co. Well, even if that were so I do not know that it would make any difference; it would still fail to make Mr. Edmonds responsible beyond the particular business in which that capital was embarked. But the fact is, there is another large indebtedness over and above that which grew out of

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these transactions between Edmonds and Squier. There is demonstration that there was a large business outside of those transactions in which Mr. Edmonds did not participate at all, and in which he had no right to participate, and the parties connected with that other business had no right to participate in these transactions between Edmonds and Squier.

It seems to me that if you will go back a few years to the time when the 3.65 bonds of this District were fluctuating in value, a good illustration can be given. Suppose at that time I had gone to Mr. Riggs and asked him to buy for me some of these securities at a rate which would yield to me such a profit. Suppose after he had bought them I should have kept them in a box in his vault. Suppose we had entered into a stipulation, he to give a warrant of the genuineness of the bonds purchased, with the further agreement that if the bonds should reach a certain margin he should sell them for me and reinvest the money in some other securities. Nobody could imagine for a moment that such a transaction as that would make me a partner of Mr. Riggs, and responsible for his debts in case he failed.

It is the same transaction that occurs every day in Wall street. A broker there has every day from ten to fifteen customers. He keeps a separate account of each customer, and shares profits with him—either a stipulated commission or an uncertain commission. And the case here is a much stronger case as to the limited liability, because in New York the broker himself, I presume, ordinarily keeps the securities. In fact, he does not always have the securities at all. It is a mere speculation, a mere wager on the market price. Here the customer had the securities, and was the exclusive custodian of them. In the case of the failure of a broker under the circumstances I have stated,

would any one pretend that the customer dealing with the broker was his partner and the partner of every other customer of the broker?

Now, this transaction is such as the one I have stated in the case of the broker. If Mr. Edmonds had contracted a debt he would have been liable for that debt. But it is just as separate from the general business of Squier & Co. as the transaction of a customer with a broker.

The relation between Edmonds and Squier is a partnership relation to this limited extent. It does not extend one iota beyond it. It does not connect Mr. Edmonds as the principal of Mr. Squier, nor in any way involve him in responsibility with Mr. Squier.

I can do nothing more than dismiss the bill.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 245.

JESSE B. WILSON, Receiver of J. H. Squier and Company,

APPELLANT,

vs.

JAMES B. EDMONDS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

REPLY TO SUPPLEMENTAL BRIEF FOR APPELLANT.

NATH'L WILSON,
Of Counsel for Appellee.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1889.

Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE B. WILSON, RECEIVER, APPELLANT,
v.
JAMES B. EDMONDS.

No. 245.

Reply to Supplemental Brief for Appellant.

The court below dismissed the complainant's bill because, on considering all the evidence in the case, it found that the written agreements made by the defendant, Edmonds, with Squier & Co., and the transactions between them related solely to the "special venture" described in their contract and to vouchers that were by the terms of the contract not to be mingled with but kept separate from the general business of Squier & Co., and that nothing in the case connected Edmonds with the general business of Squier & Co.

From these findings of fact the conclusion seemed to the court unavoidable that Mr. Edmonds is not responsible, as a partner, for the debts incurred by Squier & Co. in the course of other business transactions.

It appears to be conceded that if Edmonds was not in

some way concerned or interested in the affairs of Squier & Co. which were beyond the scope of the contract, then whatever were the relations between the parties as to the subject-matter of the contract, Edmonds is not liable for the debts due the general creditors.

The purpose of the supplemental brief apparently is to convince this Court, not that the court below misapprehended the law applicable to the facts in the case, but that it erred in its estimate of the evidence, and that the record does show that Edmonds was interested in the general business of Squier & Co.; that the entire business of that firm related directly or indirectly to "these vouchers," and was carried on with Edmonds' capital for his benefit, and that he received a portion of the profits of the entire business.

What justification for this contention does the record contain?

Where are we to look for the origin of this asserted general partnership liability?

Clearly it must be found, if found at all, in the written contract between the parties or in the course of dealing which the record discloses.

I.

That the term "profit" contained in the contract of 1880 (R., p. 25) and in that of 1883 (R., p. 11) related exclusively to the proceeds of vouchers therein provided for to be purchased with money advanced by Edmonds seems too plain to be denied.

The Court below says "the profit to Edmonds was to be "derived from the identical securities which his money "bought and from nothing else."

Opinion, p. 4.

It is equally plain that the contract provided or contemplated a fund adequate for the payment to Edmonds of the stipulated profit or interest, without any reference to money to be derived from any other source.

To say that the term thus definitely used in the agreements with reference to certain designated securities and to their proceeds does in fact apply to all the business of the banker with whom the contract was made is a mere assertion, which is contradicted by the very language of the agreements.

As the agreements do not provide for participation in the profits of the general business, nor give the right to compel an account of these profits, they create no partnership in the general business.

Pleasants *v.* Fant, 22 Wall. 120.,

II.

But the argument in the brief for the appellant is (notwithstanding the plain and obivous meaning of the written contracts) that the history of Squier's bank and the condition of his business at the time of his failure show a participation by Edmonds and an interest in the general business of the bank.

a. It is urged in the first place that in reality Squier & Co. had no general business outside the transactions with Edmonds, that the little he had was carried on for Edmonds' benefit, and that when he failed he had in his hands an insignificant amount of vouchers, and that Edmonds had possession of the greater part of the assets.

These statements are made on the authority of the testimony of Mr. Smith, who was a clerk in the employ of Squier & Co.

He is a creditor of the firm for money advanced to it, to

be returned with interest at the rate of twelve per cent. It is to his interest that the defendant be held liable for the payment of the debt due him.

He personally knew little or nothing of the transactions between Edmonds and Squier, or of the moneys paid and received, except as he learned them from the books and the checks on an examination made after the failure.

The books were admittedly erroneous and unreliable. They contained no entry of checks given by Edmonds to Squier amounting to $7,000, and showed only a portion of the $8,000 advanced in addition to the checks.

It is true that the record does not show in detail all the business of Squier & Co., but it does show that there was an office or banking-house on Pennsylvania Avenue; that Squier devoted his own attention to the business; that he employed a clerk, the witness Smith; that he represented himself to the public, and particularly to the defendant Edmonds, as engaged in a large way in all the branches of business usually carried on by a banker and broker, and that he kept accounts in four other banks—two in New York city and two in Washington.

R., p. 80.

At the time of the failure the firm owed between $108,000 *and* $109,000 *exclusive of the indebtedness to Edmonds* (R., p. 82), *and had on hand assets amounting not to* $7,000 *only, as erroneously stated in the brief for appellant, but to between* $57,000 *and* $67,000. (R., p. 83).

There were between $5,000 and $7,000 of what the witness terms *live* vouchers, and between $50,000 and $60,000 vouchers that the witness considered bad.

These facts certainly justified the court below in finding, as it did find, that "there is demonstration that there was "a large business outside of those transactions" (referring

to the transactions provided for in the contracts), in which Mr. Edmonds did not participate at all.

Opinion, p. 6.

b. It is also urged, on the strength of the testimony of the same witness, that when Edmonds became interested in the business of Squier & Co. the entire capital of the firm was not more than $3,000 or $4,000, and it is intimated that all the capital that went into the business after that date was furnished by Edmonds to keep up the "failing" business" for his own benefit.

The amount of capital possessed by Squier & Co. in 1879, or at any other time, is a matter of the merest conjecture and inference. It might have been $1,000 or $100,000. There was no account in the ledger with capital; no balance sheet was ever prepared; no examination was ever made to ascertain the difference between the assets and liabilities.

R., p. 82.

Mr. Smith testifies that, after the failure, he made a "*calculation*," and estimated the amount of capital by adding to the cash on hand, at any particular day, the amount of the paper that would fall due on or after that day.

R., p. 71.

It is upon this and similar "calculations" that the positive assertions in the brief relative to the capital of Squier & Co. are based. But whether the capital was large or small is wholly immaterial to the present inquiry, as it is demonstrated that Edmonds had no control of it or interest in its investment.

c. It is also argued that Edmonds was really the principal in the firm of Squier & Co., and that the vouchers he obtained were paid for, and the monthly payments of profits

or interest were made out of the general funds of Squier & Co.

These suggestions lack even the feeble support of the testimony of Smith.

There is nothing in the record that shows or tends to show that one voucher was ever purchased for Edmonds that was not paid for by him, or that one dollar was ever paid to him that was not derived from the proceeds of vouchers bought with his money, or that Edmonds was ever concerned in one single transaction with Squier that did not relate to the vouchers purchased for him.

At the time of the failure he had but $28,000 of vouchers in his possession, and yet had advanced sufficient money to have purchased vouchers of the face value of over $40,000.

If the vouchers purchased for him were purchased at the rates mentioned in the contract, the monthly payments to Edmonds were thereby provided for, and could be made without reference to or being taken from the funds of any other person or the proceeds of any outside vouchers. There is nothing in the record to show that the vouchers were not so purchased and that the payments were not so made.

The trivial circumstance that Mr. Edmonds in his answer states that the securities in his hands consisted "*mostly* of "pay-vouchers," and that in the list of securities a note for $1,000 is mentioned, appear to be considered deeply significant admissions. An examination of the list of vouchers will show that they included *naval allotments*. The answer was no doubt framed with reference to that fact, and as to the note for $1,000, it is not inconceivable that a voucher accompanied the note for the payment of which the voucher served as security.

III.

As against the "calculations" and estimates and suppositions of the witness Smith, and as against the theories and inferences derived therefrom by the counsel for the appellant, is the positive testimony of the defendant.

Being asked—

"Did you have any understanding, or did you have any "business transactions with Squier & Co. other than the "loan of the moneys to which you have referred and the "repayment thereof,"

his reply is—

"A. None whatever of any kind, although I was fre- "quently urged by him to allow him to invest money for "me in other ways, but I never invested in anything ex- "cept these vouchers, and upon the understanding all the "while that my money was to be kept in them, and when "not invested in them it was to be returned to me, whether "the notes were due or not. The object and intent of that "was to keep my affairs by themselves, and not to mix "them with his bank affairs or with his business with other "people."

R., p. 51.

Not a single fact has been proved that is inconsistent with the absolute accuracy of this statement.

IV.

Another origin for the liability which it is sought to impose upon the defendant is suggested in the supplementary brief, which should, perhaps, be noticed.

It is said that the interests or profits exacted by Edmonds for the use of his money were so excessive that an equity court will hold him responsible as a partner.

Sup. Brief, p. 14.

This proposition, of course, assumes that the testimony of Mr. Edmonds is false, and that the written agreements so frequently referred to are to be ignored.

It assumes that the excess of payments over 10 per cent. were *not* to be credited in part payment of the notes.

But if excessive and usurious interest had been stipulated for and paid, that fact would constitute no reason for making Edmonds a partner.

The statute in force in this District, referred to in the brief for appellee already filed, gives a remedy for the payment of usurious interest, and provides a method for its recovery.

The remedy thus provided is exclusive.

Walsh *v.* Mayer, 111 U. S., 31.

Stephens *v.* Bank, 111 U. S., 197.

But if there were no statute applicable, a court of equity would not impose as a penalty for taking illegal interest a liability twice as great as the amount of the money advanced, *nor would it give any relief without providing for the repayment of the money due, with lawful interest.*

In Tiffany *v.* Boatmen's Institution (18 Wall., 375), this Court says:

"It does not follow in cases of usury, if the contract be "executed, that a court of chancery, on application of the "debtor, will assist him to recover back both principal and "interest. To do this would be to aid one party to an il- "legal transaction and to deny redress to the other. Courts "of equity have a discretion on this subject, and have pre- "scribed the terms on which their powers can be brought "into action. They will give no relief to the borrower if "the contract be executory, except on the condition that "he pay to the lender the money lent with legal interest; "*nor, if the contract be executed, will they enable him to re-*

" *cover any more than the excess he has paid over the legal* " *interest.*"

In answer to the demand made in that case by the *trustee* on behalf of the *creditors* of the borrower, that there should be transferred to the creditors a sum of money exceeding $150,000, which the debtor never owned, by way of punishment to the lender for taking usurious interest, the Court says:

"A court of equity does not deal with contracts affected " with usury in this way. The relief it gives is always " based on the idea that the money borrowed, with legal " interest, shall be paid."

To the same effect are the decisions of this Court in Stanley *v.* Gadsby, (10 Peters, 521); Spain *v.* Hamilton (1 Wall., 604).

The case of Tiffany *v.* The Boatmen's Institution disposes also of the pretension that the appellant in this case is entitled to the special consideration of a court of equity, and has superior equities because he is a receiver appointed by the court on behalf of creditors.

In the case referred to the same claim was made on behalf of the assignee in bankruptcy.

The court held that even if the lender had good reason to believe the borrower insolvent, the loans could not be impeached by the assignee unless they were fraudulent in fact, and that the assignee stood in no relation to them and to the lender different from that occupied by the borrower.

The attention of the court to the opinion above quoted from is asked. It is believed that it affords a satisfactory and, indeed, a conclusive answer to the points upon which the appellant seems chiefly to rely.

V.

The final suggestion in the supplemental brief is that the money advanced by Edmonds gave the firm of Squier & Co. a fictitious credit, and persons *may* have been induced thereby to part with their money, and therefore the argument is, Edmonds ought in equity to be estopped from denying that he was a partner.

That any persons were in fact so "induced" is not pretended. Indeed, it is said to be "immaterial" whether they were or not.

The doctrine of equitable estoppel can have no possible relevancy or application to such a case.

The record shows what the "inducement" really was which led the creditors of Squier & Co. to part with their money. It was a very different one from that put forward by the counsel for appellant.

Squier & Co. advertised that *six per cent. interest would be paid on all deposits, on demand, and that special rates would be allowed on time deposits.*

R., p. 83.

Of the 150 creditors on whose behalf the appellant is invoking the aid of a court of equity every one, with a single exception, was entitled to claim and receive interest.

In the auditor's report, which it is stipulated contains a true statement, or summary, of the indebtedness to Squier & Co. without reference to the claims of Edmonds (R., p. 123), all the claims are enumerated and classified as follows:

Depositors enumerated in Schedule A, to whom interest allowed did not exceed 6 per cent., $17,115 72

Depositors enumerated in Schedule B, 7%.	1,842	02
" " " " C, 8%.	5,675	28
" " " " " 10%	893	10
" " " " " 12%	20,463	90
Holders of promissory notes, as per Schedule C (10%)	26,365	00
Open accounts, Schedule C	109	36
Total	$81,464	38

In addition to all these there is a claim of Mr. John Evans for a balance due him of $12,780.35 under a contract whereby he was to be allowed interest at the rate of 15 per cent. per annum.

The auditor finds that the credits to Evans of interest, *traced back to the year* 1876, amounted to as much, or more, than the amount claimed.

How much of the indebtedness was incurred prior to the date of Edmonds' first advance the appellant has not thought it important to show.

If it existed at that time, and Squier & Co. were then practically bankrupt, as Mr. Smith asserts, then the creditors can have suffered no injury from Edmonds' transactions, but on the contrary must have been benefited by the continued payment of interest up to the time of the failure, and must have received a part of Edmonds' money which was diverted by Squier from the purpose for which Edmonds intended it.

If the indebtedness was created *after* April, 1879, the date of Edmonds' first advance, what superior right to equitable consideration have these other creditors?

There is just as much reason for asserting that the money of Edmonds was used to pay "profits" or interest to the other creditors as there is to say that the money of the other creditors was used to pay to Edmonds "profits" or interest.

These creditors, up to the time of the failure, continued to receive their "profits" in the form of interest at the rate of 6, 7, 8, 10, 12, and 15 per cent. per annum.

What equitable consideration can be urged in favor of their claim against Edmonds that would not be as applicable to a claim made by Edmonds for the payment of his debt?

In fact, a superior equity exists in favor of Edmonds. He strove to keep his transactions wholly separate from those of other creditors, and to avoid any mixture of money or of interests.

Squier's failure to comply with his part of the agreement was not the fault of Edmonds. It worked to Edmonds' detriment and injury, not to his advantage.

The other creditors deposited their money with Squier on the faith of his general promises and credit. Edmonds had a special agreement for his own protection, which did not in the least interfere with the rights or interests of any other person.

It cannot be seriously contended that because Squier violated his agreement and cheated and defrauded Edmonds, as he admitted he had done, by misapplying the moneys received by him, and abstracting and converting to other purposes some of the vouchers purchased for Edmonds, the liability of Squier to his other creditors is in equity transferred to and devolved upon Edmonds.

There is no principle of law or doctrine of equity that can be invoked in support of such a claim.

NATH'L WILSON,
for Appellee.